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No. 03 .17

IN THE

Supreme Court of the United States

J.W., A MINOR

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

"Megan's Laws," enacted by all fifty states, provide for the ongoing registration of sex offenders with law enforcement officials, and for the publication of information about them to the community. This case presents important constitutional questions about the Illinois Megan's Laws as applied to juveniles. The questions presented are:

> Whether the Illinois statutory requirement that a juvenile, adjudicated delinquent for committing a sex offense when he was twelve years old, must register as a sex offender and be subject to community notification for the rest of his life, without any finding that he presents a continuing danger to the community:
>
> 1. violates principles of substantive due process under the Fourteenth Amendment of the United States Constitution; and
>
> 2. violates the prohibitions against cruel and unusual punishment and double jeopardy under the Fifth, Eighth and Fourteenth Amendments of the United States Constitution.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a Writ of Certiorari to review the judgment of the Supreme Court of Illinois.

OPINIONS BELOW

The opinion of the Supreme Court of Illinois is reported at 204 Ill. 2d 50, 272 Ill. Dec. 561, 787 N.E.2d 747 (Ill. 2003). The decision is reprinted in the attached Appendix. App. at 19-60.

JURISDICTION

The judgment of the Supreme Court of Illinois was entered on February 21, 2003. The Supreme Court of Illinois denied a timely petition for rehearing on March 31, 2003. This Petition is filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved are: U.S. CONST. AMEND. V; U.S. CONST. AMEND. VIII; U.S. CONST. AMEND. XIV, § 1; 730 ILL. COMP. STAT. 150/1 *et seq.* (West 2003); and 730 ILL. COMP. STAT. 152/101 *et seq.* (West 2003). The pertinent texts of these provisions are reprinted in the attached Appendix. App. at 64-96.

STATEMENT OF THE CASE

A. The Illinois Sex Offender Registration Act And Community Notification Law

1. Introduction

Petitioner, a juvenile, files this Petition for Writ of Certiorari, seeking to reverse the decision of the Illinois Supreme Court, which found no constitutional defect in certain Illinois statutes which required Petitioner

to register as a sex offender for the rest of his life. App. at 38-39. That lifetime obligation was imposed on Petitioner as a consequence of his plea of guilty in juvenile court to two counts of aggravated criminal sexual assault arising out of conduct that occurred when he was twelve years old. App. at 1. The lifetime registration requirement, as well as the statutory directives for community notification, violate Petitioner's right to substantive due process under the Fourteenth Amendment of the United States Constitution because they impose a permanent stigma based upon acts committed when Petitioner was a child, without any reasonable justification, contrary to deeply embedded principles of juvenile justice. Further, they violate the proscriptions against cruel and unusual punishment and double jeopardy under the Fifth, Eighth and Fourteenth Amendments of the United States Constitution.

The two statutes at issue, the Sex Offender Registration Act, 730 ILL. COMP. STAT. 150/1 *et seq.* (West 2003) ("Registration Act") and the Sex Offender and Child Murderer Community Notification Law, 730 ILL. COMP. STAT. 152/101 *et seq.* (West 2003) ("Notification Law," collectively referred to as "the Illinois Statutes"), together govern the obligations of certain sex offenders to register with, and provide information to, law enforcement officials. App. at 74-85, 89-90. They also govern the use and publication of the information provided at registration. App. at 85-87, 90-95.

The Registration Act requires persons who have been convicted of certain crimes (as well as others who have been charged with but not acquitted of those crimes) to register with law enforcement officials as sex offenders. 730 ILL. COMP. STAT. 150/2, 150/3 (West 2003). It also requires registration by sexually dangerous and sexually violent persons (as defined in the Illinois Statutes), and by juveniles like Petitioner who have been adjudicated delinquent as a result of committing

or attempting to commit an act which, if committed by an adult, would constitute one of the offenses requiring adult registration. *Id.* Registrants are subject to either a 10-year or a lifetime reporting period, depending upon how their offenses are categorized. 730 ILL. COMP. STAT. 150/7 (West 2003).

The Registration Act defines "sexual predator" as a person convicted of an aggravated offense (including aggravated criminal sexual assault) or of a second or subsequent offense which requires registration. 730 ILL. COMP. STAT. 150/2(E). The definition of sexual predator also includes sexually dangerous persons and sexually violent persons. *Id.* A sexually violent person has been convicted (or if a juvenile, adjudicated guilty) of a "sexually violent offense" and has been proven beyond a reasonable doubt to be dangerous, defined as suffering "from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence." 725 ILL. COMP. STAT. 207/5 (West 2003).. A sexually dangerous person is a person charged with a certain type of criminal offense, who has been proven beyond a reasonable doubt to have suffered from a mental disorder for at least one year and to "have demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children." 725 ILL. COMP. STAT. 205/1.01 (West 2003). Petitioner qualifies as a "sexual predator" for purposes of registration solely because of the nature of the offenses for which he was adjudicated delinquent. App. at 13.

2. Duty To Register

A sex offender or sexual predator must register in person and provide accurate information, including current address, current place of employment and school attended, to law enforcement officials in each municipality or county in which he or she attends school, is employed, resides, or is temporarily domi-

ciled (defined as all places where the individual resides for an aggregate period of 10 or more days during any calendar year). 730 ILL. COMP. STAT. 150/3(a). The sex offender must register within 10 days of obtaining or changing employment. 730 ILL. COMP. STAT. 150/3(d).

A sex offender or sexual predator must register in person at the place where he or she last registered, within one year of the date of the last registration, even if there is no change in the required information. 730 ILL. COMP. STAT. 150/6 (West 2003). If there is a change, the person must notify the appropriate law enforcement agency in writing of the change within 10 days. *Id.* Registration requires a signed written statement that the person is a sex offender. 730 ILL. COMP. STAT. 150/8 (West 2003).

Registration information is transferred to State Police and recorded in a police database. 730 ILL. COMP. STAT. 150/8. The address of each sex offender or sexual predator is verified once a year by police, using non-forwardable registered mail. 730 ILL. COMP. STAT. 150/5-10 (West 2003).

A sex offender may not change his or her name, and any attempt to do so is a felony. 730 ILL. COMP. STAT. 150/10 (West 2003). Failure to comply with registration requirements will subject the offender to felony prosecution. *Id.* In addition, "[a]ny person convicted of a violation of any provision of [the Registration Act] shall, in addition to any other penalty required by law, be required to serve a minimum period of 7 days confinement in the local county jail." *Id.* Furthermore, "[t]he court shall impose a mandatory minimum fine of $500 for failure to comply with any provision of [the Registration Act]." *Id.*

Sexually dangerous persons, sexually violent persons, and sexual predators must register for life. 730 ILL. COMP. STAT. 150/7. All other sex offenders are

required to register for 10 years from conviction, adjudication or release from confinement. *Id.*

3. Community Notification

For both juvenile and adult sex offenders, the Notification Law requires law enforcement officials to notify school officials and child care facilities in any county where the offender is required to register of the offender's name, address, date of birth, place of employment, school attended, and offense. 730 ILL. COMP. STAT. 152/120(a)-(a-3) (West 2003). The Illinois Department of Children And Family Services ("DCFS") must be provided the same information for all offenders. 730 ILL. COMP. STAT. 152/120(a-4).

With respect to adult sex offenders, any law enforcement official may release the offender's name, address, and date of birth, the offense for which the offender was convicted or adjudicated as a sexually dangerous person, the offender's photograph or other such information that will help identify the sex offender, and employment information "to any person likely to encounter a sex offender, or sexual predator." 730 ILL. COMP. STAT. 152/120(b). Further, "the name, address, date of birth, and offense or adjudication . . . shall be open to inspection by the public," and may be published on the internet. 730 ILL. COMP. STAT. 152/120(c). Photos of offenders whose victims were under 13 may also be published on the internet, in print media, or on television. *Id.*

Publication of registration information for adjudicated juvenile sex offenders is limited as follows:

> The Department of State Police and any law enforcement agency having jurisdiction may, in the Department's or agency's discretion, only provide the information specified in subsection (b) [i.e., the offender's name, address,

> and date of birth, the offense for which the offender was convicted, adjudication as a sexually dangerous person, the offender's photograph or other such information that will help identify the sex offender, and offender employment information] with respect to an adjudicated juvenile delinquent, to any person when that person's safety may be compromised for some reason related to the juvenile sex offender.

730 ILL. COMP. STAT. 152/120(e).

B. Petitioner's Case In The Illinois Courts

In November 1999, Petitioner, twelve years old at the time of his offense, was charged with aggravated criminal sexual assault in a delinquency petition filed in juvenile court in the Circuit Court of the 16th Judicial Circuit, Kane County, Illinois. App. at 20. He entered into a plea agreement whereby he admitted to two counts of the offense. *Id.* There was no agreement as to his sentence. *Id.*

After a hearing, Petitioner was sentenced to five years probation, required to take an AIDs test and ordered to register as a sex offender. App. at 2. He was placed in residential treatment for approximately six months. App. at 24. After his release, Petitioner was prohibited from residing in or entering his home community, South Elgin, Illinois, where his parents continued to reside. App. at 12.

Petitioner appealed the conditions of his probation, which required him to register as a sex offender and which prohibited him from residing in or entering South Elgin, to the Illinois Appellate Court. App. at 12-13. Petitioner argued, among other things, that the requirement of lifetime registration violated substantive due process and infringed his liberty interest. App. at

12, 16. In an unpublished order issued on July 9, 2001, the Illinois Appellate Court affirmed the trial court's judgment, rejecting Petitioner's constitutional challenges to the conditions of probation. App. at 13. The Illinois Appellate Court also held that Petitioner would be required to register as a sex offender for the rest of his natural life because the crimes of which he was adjudicated guilty rendered him a "sexual predator" as defined by the Registration Act. *Id.* The Illinois Appellate Court stayed the order requiring Petitioner to register as a sex offender, pending the conclusion of the appeal. App. at 12.

C. The Decision Of The Illinois Supreme Court

On appeal to the Supreme Court of Illinois, Petitioner argued that requiring him to register as a sex offender for life violates substantive due process as well as the constitutional proscriptions against double jeopardy and cruel and unusual punishment. *See generally* App. 19-60. He also argued that the condition of his probation forbidding him to reside in or enter South Elgin was overly broad, unreasonable, and violated his constitutional rights. App. at 19.

The Illinois Supreme Court affirmed the Appellate Court's holding that Petitioner register as a sex offender for life and that the statutory requirement is constitutional. App. at 31-42. The Illinois Supreme Court vacated the prohibition against entering or residing in South Elgin because it was unconstitutional and overbroad. App. at 42-49. The Court remanded the case for reconsideration of whether the restriction was warranted. App. at 49.

Justices Mary Ann McMorrow and Charles Freeman filed a special concurrence, inviting the Illinois legislature to review the lifetime registration requirement as applied to juvenile sex offenders. App. at 50-52. Specifically, those justices noted that "[t]he pub-

lic safety concerns which animate the registration and notification laws should be harmonized with our traditional understanding of the need to protect and rehabilitate the young citizens of this state." App. at 52.

Justice Thomas Kilbride dissented from the majority's decision. App. at 52-60. Justice Kilbride's interpretation of the Illinois Statutes would not have classified a juvenile as a "sexual predator," thus reducing his registration obligation to 10 years. App. at 54-57. Justice Kilbride also dissented because, in his judgment, requiring a 12-year-old to register as a sex offender for life offends well-settled principles of substantive due process. App. at 58-60. Justice Kilbride wrote:

> It is indisputable that J.W. could not have been prosecuted as an adult for his conduct. To treat him as an adult by requiring him to comply with lifetime registration requirements cannot seriously be considered a "reasonable" means of furthering the state's interest. I can conceive of no legitimate rationale for subjecting a juvenile delinquent under the age of 13 to lifetime registration requirements. Accordingly, I believe that subjecting juvenile delinquents to a lifetime registration requirement violates principles of substantive due process as it is an unreasonable method of accomplishing the state's desired objective, and is therefore unconstitutional as applied to juvenile delinquents.

App. at 59.

The Illinois Supreme Court denied Petitioner's Petition for Rehearing on March 31, 2003. App. at 61. On April 9, 2003, it stayed issuance of the mandate pending the filing of this Petition for Writ of Certiorari. App. at 62-63.

REASONS FOR GRANTING THE WRIT

I. The Writ Should Be Granted Because This Case Presents Important Unresolved Questions Of Federal Constitutional Law.

Like other states' Megan's Laws, the Illinois Registration Act provides that persons convicted of certain crimes (or juveniles adjudicated guilty of those crimes) must register as sex offenders with law enforcement officials for the rest of their lives. 730 ILL. COMP. STAT. 150/3. The Illinois Notification Law mandates that certain information provided by those registrants must be provided to schools, child care facilities, state agencies, and the public. 730 ILL. COMP. STAT. 152/120.

This Court's recent decisions involving similar laws left open the question of whether such statutes, and in particular their lifetime registration requirements, offend principles of substantive due process. *See Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. __, 123 S. Ct. 1160 (2003) (under Connecticut's "Megan's Law," respondent sex offender was not entitled to a hearing to establish a fact, i.e., whether he is currently dangerous, that was not material under the statute); *Smith v. Doe*, 538 U.S. __, 123 S. Ct. 1140 (2003) (Alaska's Megan's Law was not punitive, and its retroactive application did not violate Ex Post Facto Clause). The Court in *Connecticut Dep't of Pub. Safety* specifically noted that the case did not present the issue of whether Megan's Laws violated substantive due process. *See Connecticut Dep't of Pub. Safety*, 123 S. Ct. at 1164-65; *id.* at 1165 (Souter, J., concurring) (Court's holding does not foreclose a claim based upon substantive due process).

This case presents an important substantive due process issue left open by the Court's two recent decisions, namely whether the Illinois requirement of lifetime registration for certain juvenile sex offenders,

without regard to their current dangerousness, is fundamentally unfair. The issue arises in the specific context of a boy, twelve years old at the time of his offense, who is subject to mandatory lifetime registration based solely upon his plea of guilty in juvenile court to aggravated criminal sexual assault, and not upon any finding that he poses, or will ever pose at any time during the rest of his life, a danger to the community.

Petitioner submits that the mandatory lifetime registration requirement of the Illinois Registration Act, together with the requirements of the Notification Law, violate substantive due process. The mandatory and inflexible lifetime registration requirement cannot be justified by the purely hypothetical risk that Petitioner will pose a danger to the community for the rest of his life. This Court should grant the Writ of Certiorari to settle this important question of constitutional law, which will arise in connection with many states' Megan's Laws.[1]

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[1] In 2003, 29 states specifically include juveniles in their registration requirements to some extent. Of these 29 states, 12 states require, under certain circumstances, lifetime registration with no chance of early termination for juveniles: California (CAL. PENAL CODE § 290 (Deering 2003)); Delaware (DEL. CODE ANN. tit. 11, § 4121 (West 2002)); Illinois (730 ILL. COMP. STAT. 150/7 (West 2003)); Indiana (IND. CODE ANN. §§ 5-2-12-4, 5-2-12-13 (Michie 2003)); Massachusetts (MASS. ANN. LAWS ch. 6 §§ 178C, 178G (Law. Co-op. 2003)); Michigan (MICH. COMP. LAWS §§ 28.722, 28.723, 28.728 (2003)); Minnesota (MINN. STAT. § 243.166 (2002)); Montana (MONT. CODE ANN. § 41-5-1513 (2002)); Nevada (NEV. REV. STAT. 179D.400, 179D.490 (Michie 2003)); Ohio (OHIO REV. CODE ANN. §§ 2950.03, 2950.07 (Anderson 2002)); South Carolina (S.C. CODE ANN. § 23-3-460 (Law. Co-op. 2002)); and Wisconsin (WIS. STAT. § 301.45 (2002)). The other 17 states each have some mechanism for early termination of registration requirements for juveniles or for all sexual of-

II. The Illinois Statutes Violate Substantive Due Process Because The Requirement Of Lifetime Registration Bears No Rational Relationship To The Purpose Of Protecting The Public From Recidivist Sex Offenders.

Substantive due process bars arbitrary government actions without regard to the fairness of the procedures used to implement them. *Daniels v. Williams*, 474 U.S. 327, 337 (1986) (Stevens, J., concurring). A violation of substantive due process is complete when the action is taken; the deprivation cannot be justified by the procedures used to accomplish it. *See McClary v. O'Hare*, 786 F.2d 83, 88 (2d Cir. 1986). Government action is arbitrary, and therefore in violation of substantive due process, when a fundamental liberty interest is infringed by government action, unless the action is narrowly tailored to serve a compelling state interest. *Reno v. Flores*, 507 U.S. 292, 301-02 (1993). When the liberty interest infringed is not fundamental, due process demands a "reasonable fit" between the governmental purpose and the means chosen to advance it. *See id.* at 305. Here, the lifetime registration requirement for juveniles is utterly arbitrary, invading significant rights without any reasonable justification, and it cannot

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fenders. *See* Elizabeth Garfinkle, *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community-Notification Laws to Juveniles*, 91 CAL. L. REV. 163, 177 (2003) (28 states specifically include, to some extent, juveniles in registration and notification requirements, 16 states remain silent, 5 states remain silent but specifically include juveniles tried as adults, and 1 state specifically excludes juveniles from registration and notification); *In re Registrant J.G.*, 169 N.J. 304, 327-30 (2001) (discussing the "substantial variations" among Megan's Laws throughout the states, particularly as applied to juveniles).

withstand even minimal scrutiny under the due process clause.

A. Petitioner's Fundamental Liberty Interests Are Infringed By Lifetime Registration.

In its recent decisions involving Megan's Laws, this Court did not reach the question of whether registration requirements implicate fundamental rights. *Smith v. Doe*, 538 U.S. __, 123 S. Ct. 114; *Connecticut Dep't of Pub. Safety*, 538 U.S. __, 123 S. Ct. at 1165. There is disagreement[2] among courts concerning this impor-

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[2] *Cutshall v. Sundquist*, 193 F.3d 466 (6th Cir. 1999) (Tennessee's registration and notification laws do not violate protected liberty interest); *Neal v. Shimoda*, 131 F.3d 818 (9th Cir. 1997) (Inmates entitled to adversarial hearing before being labeled sex offenders as Hawaiian Act affected inmates' protected liberty interests); *Russell v. Gregoire*, 124 F.3d 1079 (9th Cir. 1997) (Washington's sex offender registration and notification provisions do not violate tangible liberty interest); *Fullmer v. Michigan Dep't of State Police*, 207 F. Supp. 2d 650 (E.D. Mich. 2002) (Michigan's registration provisions satisfy stigma plus test); *Doe No. 1 v. Williams*, 167 F. Supp. 2d 45 (D.D.C. 2001) (Youth offenders' liberty interests implicated by public notification provisions); *Corbin v. Chitwood*, 145 F. Supp. 2d 92 (D. Me. 2001) (Maine's sexual offender notification provisions alone do not threaten a liberty interest); *Doe v. Pryor*, 61 F. Supp. 2d 1224 (M.D. Ala. 1999) (Alabama's community notification act substantially likely to deprive offenders of liberty interest protected by due process); *Doe v. Pataki*, 3 F. Supp. 2d 456 (S.D.N.Y. 1998) (Registration and notification laws "encroach on the liberty of convicted sex offenders, and, therefore, they suffer a tangible impairment of a right in addition to mere harm in reputation."); *Roe v. Farwell*, 999 F. Supp. 174 (D.Mass. 1998) (Under Massachusetts' law, sex offenders' liberty interest in privacy and reputation cannot be infringed by community notification provisions without due process); *State v. Bani*, 36 P.3d 1255 (Haw. 2001) (Public notification provisions substantially injure liberty interest protected under due process

tant constitutional issue which affects both juvenile and adult offenders. The issue should therefore be resolved by this Court. *See Doe v. Dep't of Pub. Safety*, 271 F.3d 38 (2d Cir. 2001), *rev'd on other grounds*, 538 U.S. __, 123 S. Ct. 1160 (2003).

A fundamental liberty interest is implicated when there is injury to reputation, i.e., a stigma, plus a change in legal status. *Paul v. Davis*, 424 U.S. 693 (1976); *Doe v. Dep't of Pub. Safety* 271 F.3d 38 (2d Cir. 2001), *rev'd on other grounds*, 538 U.S. __, 123 S. Ct. 1160 (2003). As in the Second Circuit decision in *Dep't of Pub. Safety*, the "stigma plus" test, is easily met in this case. Petitioner will not only suffer the lifelong stigma of being labeled a danger to the community without any proof of his continuing dangerousness, but he will also bear a corresponding lifelong burden of registration which will markedly change his legal status. *See Dep't of Pub. Safety*, 271 F.3d at 56-57 (registration obligations, including annual verification of address, notification of address change within five days, ongoing requirement to be photographed, and possible felony prosecution for non-compliance, satisfied "stigma plus" test).

This Court has recognized that government action may have a much more serious effect on a juvenile than it has on an adult. *See Eddings v. Oklahoma*, 455 U. S. 104, 115 (1992) (juvenile "may be most susceptible to influence and to psychological damage"); *Schall v. Martin*, 467 U.S. 253, 291 (1984) (Marshall, J., dissenting)

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clause); *Helman v. State*, 784 A.2d 1058 (Del. 2001) (Delaware's registration and notification laws do not implicate protected liberty or privacy interests); *State v. Williams*, 728 N.E.2d 342 (Ohio 2000) (Ohio sex offender notification law does not impair protected liberty, privacy, or property interests); *Johnson v. State*, 795 So. 2d 82 (Fla. Dist. Ct. App. 2000) (Florida's sex offender registration and notification requirements do not violate due process rights).

(due to juveniles' impressionability, pre-trial detention of juveniles may be equivalent to imprisonment for adults); *Thompson v. Oklahoma*, 487 U.S. 815 (1988) ("[a]dolescents . . . are more vulnerable, more impulsive, and less self-disciplined than adults"). Without question, in this case, Petitioner will suffer shame and humiliation simply by virtue of being ordered to register for life as a sex offender. Like the juvenile pre-trial detainees in *Schall*, a juvenile facing lifetime registration as a sex offender may "come to see society at large as hostile and oppressive and to regard [himself] as irremediably 'delinquent.'" *Schall*, 467 U.S. at 291 (Marshall, J., dissenting). Further, quite apart from the scope of notice to the community, registration as a sex offender for acts committed as a child will continue to humiliate and shame a juvenile offender long after he attains majority.

In addition to that obvious stigma, the Illinois Registration Act also imposes "extensive and onerous" duties on Petitioner which will change his legal status for life. *See Dep't of Pub. Safety*, 271 F.3d at 57; *see also Connecticut Dep't of Pub. Safety*, 123 S. Ct. 1160 (Stevens, J. concurring)[3] (registration and reporting duties comparable to duties imposed on convicted adult criminals during supervision or parole implicate liberty interest). Petitioner will be required at least annually to report in person to police and identify himself as a sex offender. *See* 730 ILL. COMP. STAT. 150/6. He will also be required to register in every place, within or outside the State of Illinois, where he is employed, attends school, or stays for more than 10 days in a year. *See* 730 ILL. COMP. STAT. 150/3. Petitioner will be required to provide photos, fingerprints, and annual verification of his residence address to police. *See* 730 ILL. COMP. STAT. 150/3,

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[3] This concurrence is found in Justice Stevens' dissent in *Smith v. Doe*, 123 S. Ct. 1140, 1156-59 (2003).

150/6, 150/8. He is forbidden to change his name. *See* 730 ILL. STAT. COMP. 150/10. Any failure to comply with registration requirements will subject Petitioner to felony prosecution. *Id.* If convicted, in addition to other penalties, he will face a fine and *certain imprisonment* of at least seven days in the local county jail. *Id.* His sentence for a violation of his registration duties will far exceed any penalty he might have received for his original offense at the time he committed it. *See id.;* 720 ILL. COMP. STAT. 5/12-14(b)(i) (West 2003).

Petitioner, and his family, may also be prevented or discouraged from engaging in lawful activities, such as participation in school and community activities. *See* 720 ILL. COMP. STAT. 5/11-9.3 (West 2003) (sex offenders commit a felony when they are knowingly present in a school or on school grounds under certain circumstances); 720 ILL. COMP. STAT. 5/11-9.4 (West 2003) (sex offenders may not be present in public parks under certain circumstances). Mere registration as a sex offender will also hinder employment, social and familial relationships. *See Doyle v. Camelot Care Ctrs., Inc.*, 305 F.3d 603, 617 (7th Cir. 2002) (infringement of liberty interest was sufficiently alleged by pleading that potential employers could inquire of central registry to determine if DCFS found credible evidence of child abuse or neglect by potential child care workers).

Finally, community notification, even with what the Illinois Supreme Court described as "extremely limited dissemination" of the registration information, will add to the already heavy lifetime burden on Petitioner. *See In re J.W.*, 787 N.E.2d at 760. The Illinois Supreme Court majority's characterization of the Notification Law ignores the broad discretion given to police. *See* 730 ILL. COMP. STAT. 152/115-152/120. Petitioner's registration information must be provided to schools, child care facilities, and DCFS. 730 ILL. COMP. STAT. 152/120. It may be disseminated by police to others who claim

that their safety may be compromised "for some reason related to the juvenile sex offender." *Id.* The Notification Law gives police virtually unfettered discretion to release the information, but those to whom it is released are under no obligation to keep it confidential. Nor will Petitioner have any remedy for an abuse of discretion by police. Equally significant, as Illinois Supreme Court Justice Kilbride noted in his dissent, both the Notification Law and the Illinois Supreme Court majority opinion are silent about scope of community notification after Petitioner reaches age 18. *See* 730 ILL. COMP. STAT. 152/101 *et seq.*; *In re J.W.*, 787 N.E.2d at 769.

B. Petitioner's Important Rights As A Juvenile Will Be Infringed By Lifetime Registration.

In addition to the inevitable psychological harm and heightened legal duties described above, lifetime registration will cause Petitioner to forfeit important rights that inure to him as a juvenile. This Court should grant the Petition to resolve significant unsettled constitutional questions which stem from the fact that Petitioner is a child.

This Court has justified important constitutional differences between juvenile delinquency proceedings and adult criminal proceedings upon the need to preserve the rehabilitative and other *parens patriae* purposes of the juvenile justice system, as well as upon the assumption that a finding of delinquency is significantly different from, and less onerous than, a finding of criminal guilt. *See McKeiver v. Pennsylvania*, 403 U.S. 528, 540 (1971); *In re Gault*, 387 U.S. 1, 65-78 (1967) (Harlan, J. concurring). Fundamental fairness in juvenile proceedings must be achieved by balancing the need for "procedural regularity" against the desirability of "an intimate, informal protective proceeding." *McKeiver*, 403 U.S. at 543-48; *Schall*, 467 U.S. at 263. This

Court has expressed serious concern that, unless a proper balance is struck, delinquent children may "receive[] the worst of both worlds: . . . neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." *Kent v. United States*, 383 U.S. 541, 556 (1966).

The lifetime registration requirement as applied to Petitioner more than justifies the Court's concern. Under the Illinois Juvenile Court Act, a 12-year-old offender cannot be treated as an adult for any purpose. 705 ILL. COMP. STAT. 405/5-805(3)(a) (West 2003). The onerous burden of lifetime registration has therefore been placed upon a child who was never given the basic procedural rights afforded all adult offenders, such as a jury trial and certain post-conviction rights. *See In re A.G.*, 746 N.E.2d 732, 736-37 (Ill. 2001); *see also* 705 ILL. COMP. STAT. 405/5-101 (West 2003).

At the same time, Petitioner will forfeit important protections and benefits of the juvenile justice system. Petitioner will be required to register as a sex offender long after he reaches 21, the age at which every other possible sentence for his offense would terminate under the Illinois Juvenile Court Act. 705 ILL. COMP. STAT. 405/5-755(1) (West 2003) (Juvenile proceedings terminate at age 21); 705 ILL. COMP. STAT. 405/5-810 (West 2003) (Extended jurisdiction available only for minors 13 years of age or older). Petitioner's "vitally important statutory rights" to the benefits of the juvenile justice system, including the right to a confidential trial, protection from the consequences of adult conviction, and, most importantly, the right to have his fate determined in accordance with his individual best interests, will be rendered a nullity. *See Kent*, 383 U.S. at 556 (special protections and provisions of juvenile courts are "vitally important statutory rights"); *Gault*, 387 U.S. at 15-16.

Since the registration requirements for adult offenders (erroneously applied to Petitioner) are not subject to the Ex Post Facto Clause, the frequency of registration and types of information required to be provided could be changed, i.e., Petitioner's burden increased, without any corresponding change in Petitioner's condition or in the need for protection of the public. Petitioner's failure to comply with the registration requirements will subject him to imprisonment and other serious penalties. In effect, he will be on probation—or worse—for his whole life.

Finally, compelling a 12-year-old to register for life as a sex offender offends our society's core beliefs about children. Courts have long accepted the intuitively obvious fact that children are different from adults—they are more impulsive, more subject to peer pressure, less likely to understand the consequences of their actions, less criminally culpable, and more amenable to rehabilitation. *See Thompson*, 487 U.S. at 834-36. These deeply held values form the foundation for all of our national institutions (most obviously our schools), not just the criminal justice system. This Court has emphasized that all courts must take account of "the experience of mankind, as well as the long history of our law, recognizing that there *are* differences which must be accommodated in determining the rights and duties of children as compared with those of adults." *Id.* at 823 (quoting *Goss v. Lopez*, 419 U.S. 565, 590-91 (1975)) (emphasis in original) (internal citations omitted). The Illinois legislature should not be allowed to reject those elemental social values in their entirety—granting no discretion whatsoever to the courts—without a compelling justification.

The Supreme Court of New Jersey recognized the essential differences between children and adults, specifically immaturity and diminished capacity, when it refused to subject a "child 'sex offender'" to lifetime

registration when there had been "no effort to assess [the juvenile's] true culpability." *In re Registrant J.G.*, 169 N. J. at 336. Likewise, several justices of the Illinois Supreme Court expressed concern over the harshness of the lifetime registration requirement for Petitioner, noting that it was "incongruous" with the "philosophical underpinnings" of the juvenile justice system to treat children the same as adults. *In re J.W.*, 787 N.E.2d at 766 (McMorrow, C.J., concurring); *id.* at 770-71 (Kilbride, J., dissenting). Finally, counsel for the State of Illinois acknowledged that Petitioner's duty to register should not exceed 10 years because a 10-year requirement "strikes a fair balance between [Petitioner's] desire for a limited registration time and the [State's] concerns for protecting the public." *In re J.W.*, 787 N.E.2d at 769.

This Court should hold that the concerns expressed by the Illinois and New Jersey Supreme Courts are of constitutional dimension; in fact they form the bedrock of fundamental fairness for juveniles. The State of Illinois cannot, consistent with due process, simply decree that children are the same as adults. Where, as here, no justification, compelling or otherwise, exists for treating Petitioner like an adult under the Illinois Statutes and for depriving him of the benefits and protection of the Illinois juvenile justice system, this Court should grant the Writ to reverse the decision of the Illinois Supreme Court.

III. Lifetime Registration Is Not Justified By A Legitimate Public Interest.

Regardless of whether Petitioner's rights are deemed fundamental, the infringement of those rights must be justified by a legitimate public interest. The purpose of the Illinois Statutes, like other states' Megan's Laws, is to protect the public from sexual assault and abuse, and to assist law enforcement to ac-

complish that goal. *In re J.W.*, 787 N.E.2d at 757-58. As the Delaware Supreme Court phrased it in *Helman v. State*, 784 A.2d 1058, 1078 (Del. 2001), the purpose of Megan's Laws is to protect the public "from likely recidivists."

The purpose of protecting the public from recidivism does not justify mandatory and unbending lifetime registration for an offender who was twelve years old at the time of his offense. The Illinois Statutes require a 10-year registration period for most offenses covered by the statutes. *See* 730 ILL. COMP. STAT. 150/7. The 10-year registration period was presumably based upon a legislative judgment that the public will not be endangered by a sex offender who has not committed another offense covered by the statutes during a 10-year period. Further registration and notification to protect the community is therefore not warranted.

The increased burden of registration for lifetime registrants like Petitioner, as compared with 10-year registrants, cannot be justified by any corresponding increase in risk to the public. Based upon a normal life expectancy, the duration of Petitioner's lifetime duty to register as a sex offender may exceed that of a 10-year registrant by more than 50 years. That greatly increased intrusion upon Petitioner's rights could be justified, if at all, only by a showing that Petitioner and others like him[4] present (and will continue to present for the rest of their lives) a significant increased risk of harm to the public. No such risk has ever been demonstrated. *See* Garfinkle, *Coming of Age in America*, 91 CAL. L. REV. at 193 ("recidivism rates for adults are only about 13% ... [and] studies of adolescent sex offenders revealed even lower recidivism rates for juvenile sex of-

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[4] The specific offense of which Petitioner was adjudicated can be committed only by persons under the age of 17. 720 ILL. COMP. STAT. 5/12-14(b)(i).

fenses"); *see also In re Registrant J.G.*, 169 N.J. 304, 340, 777 A.2d 891 (2001) ("In many instances, sexually improper behavior by such young children [under age 14] is more a reflection of inadequate adult supervision, immaturity, inappropriate media exposure, or a prior history of emotional abuse than it is of irremediable sexually predatory inclinations.").

More significantly, the Illinois Statutes do not require that a showing of continuing risk or danger ever be made. The lifetime registration requirement was imposed upon Petitioner without *any* assessment of Petitioner's current danger to the community. Unlike other classes of "sexual predator" under the Illinois Statutes, Petitioner has never been found to be mentally ill, dangerous, or a recidivist (or to have any likelihood of becoming such). In fact, the Illinois Statutes provide no means at all for judicial modification of the registration requirement at any time, or for any reason. *See* 730 ILL. COMP. STAT. 150/1 *et seq.* Nothing Petitioner can do for the rest of his life—not treatment, education or rehabilitation—can modify his duty to register. Even potential future disability or incapacity will never make any difference in his lifelong duty to register as a sex offender.

Here, as in *Connecticut Dep't of Pub. Safety*, because the lifetime registration requirement is not founded upon any actual danger to the community, a hearing on the issue of Petitioner's dangerousness would be a "bootless exercise." *Connecticut Dep't of Pub. Safety*, 123 S. Ct. at 1164. There is no pre- or post-deprivation remedy which can cure the serious constitutional defect in the Illinois Statutes as applied to Petitioner. *See McClary*, 786 F.2d at 87.

Finally, although the Illinois Supreme Court took comfort in the fact that internet publication of Petitioner's registration information is not currently al-

lowed under the Illinois Statutes, that nominal limitation on publication does not excuse the serious and unjustified infringement of Petitioner's rights by the lifetime registration requirement. *See In re J.W.*, 787 N.E.2d at 761-62. The lifetime registration requirement is not a reasonable method of accomplishing the objectives of Megan's Laws for any sex offender, but it falls particularly far from the mark in the case of juvenile offenders. The scope of the Illinois Statutes far exceeds their legitimate purposes, and the statutes therefore violate substantive due process as applied to juvenile offenders like Petitioner.

IV. The Illinois Statutes Impose Cruel And Unusual Punishment On Juvenile Sex Offenders And Violate The Proscription Against Double Jeopardy.

The lifetime registration requirement constitutes punishment of the juvenile Petitioner, and it implicates the constitutional protections against double jeopardy and against cruel and unusual punishment, because its effects on juveniles are substantially penal in nature. *See Kansas v. Hendricks*, 521 U.S. 346 (1997); *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963).

In determining whether a statute has a punitive effect despite having a non-punitive purpose, this Court must consider the following factors: 1) whether the sanction at issue involves an affirmative disability or restraint; 2) whether the sanction has been historically regarded as punishment; 3) whether the sanction comes into play only upon a finding of *scienter*; 4) whether operation of the sanction will promote retribution and deterrence; 5) whether the behavior to which the sanction applies is already a crime; 6) whether an alternative purpose to which the sanction may rationally be connected is assignable for it; and 7) whether the sanction appears to be excessive in relationship to the

alternative purpose assigned. *Kennedy*, 372 U.S. at 168-69. The duration of the sanction at issue, or the lack of a time limit, is also relevant to determining whether a statute is punitive. *Schall*, 467 U. S. at 269-70.

Under the circumstances presented here, the only reasonable conclusion is that the requirement of lifetime registration as applied to a child is grossly excessive, and therefore punitive, in relationship to the underlying purpose of the Illinois Statutes. The mere fact that registration does not depend upon a finding of danger to the community should, in this case involving a juvenile, be sufficient to hold that the Illinois Statutes constitute punishment. *See Smith v. Doe*, 538 U.S. __, 123 S. Ct. 1140 (Ginsburg, J., dissenting). When the extreme and rigid burden of registration for life—without a finding of dangerousness ever being made—is added to the juvenile's punishment, the outcome is indisputably cruel and unusual. *See also id.* (Stevens, J., dissenting).

Finally, there is no historical precedent for treating children in the manner the Illinois legislature has chosen here. Just as imposition of the death penalty on a child under the age of 16 constitutes cruel and unusual punishment under the Eighth Amendment in light of our societal standards, *see Thompson*, 487 U.S. at 838, so, too, does the lifetime branding of an individual for acts he committed as a 12-year-old child constitute cruel and unusual punishment.

Likewise, requiring a 12-year-old offender to register for the rest of his life also violates his right to protection from double jeopardy under the Fifth and Fourteenth Amendments. The additional punishment of a juvenile when he has already been adjudicated delinquent based on that same conduct, violates double jeopardy. *Breed v. Jones*, 421 U.S. 519 (1975). This Court

should review this case to settle these important questions of constitutional law.

CONCLUSION

For all of the foregoing reasons, the Writ of Certiorari should be granted. This Court should review this case to resolve important unsettled questions of constitutional law which will recur in connection with many states' Megan's Laws. This Court should decide whether lifetime registration, with concomitant community notification, imposed upon a juvenile without any finding of continuing danger to the community, is fundamentally unfair, violating principles of substantive due process. This Court should also decide whether it constitutes cruel and unusual punishment and violates the prohibition against double jeopardy as applied to juveniles.

Respectfully submitted,

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APPENDIX

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APPENDIX A:
Sentencing Order of Trial Court

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT

KANE COUNTY, ILLINOIS

IN THE INTEREST OF:

GEN. NO. 99-JDK 950

JOHN WHALEN

A Minor Child

JUDGE PUKLIN	JUVENILE'S ATTORNEY ☐ P.D. ☒ J. RIFKIN	DCFS_____ JCS_____
DEPUTY CLERK KATHY	STATE'S ATTORNEY ABEAR	OTHER____
COURT REPORTER SUE BLOOM	PARENT'S ATTORNEY	OTHER____

ORDER

THIS MATTER coming before the Court for Sentencing Hearing, and the Court having jurisdiction and being fully advised in the premises,

IT IS HEREBY FOUND AND ORDERED:

1. John Whalen found guilty of 2 counts of Aggravated Criminal Sexual Assault (class X) and made a ward of the Court.

2. Minor Placed on probation for 5 years, until 2-16-05.
3. Minor to register as a sex offender.
4. Minor to comply with AIDS/HIV testing (705 ILCS 405/5-710).
5. Placement Services of Court Services ordered to resource this Minor for residential sex offenders treatment ASAP.
6. Upon an available residential placement being found, the Minor is ordered to fully cooperate and success fully complete that residential treatment and all follow-up treatments rec's.
7. Northwest Treatment & Associates' recommendations (3 pages) is made part of this Sentencing order and Minor/Whalen shall fully comply, cooperate, and complete those terms.
8. If Court Services cannot locate a residential treatment provider that accepts John Whalen, he shall live with his paternal aunt, Ms. Grant, at her residence and he shall not reside nor go to South Elgin.
9. All normal and usual probation terms apply, as delineated in pages attached.
10. Minor is ordered held in detention until court services determines if there is an available residential placement.
11. John Whalen's parents are placed under order of this court to comply with these orders, as they apply to them, pages 1-7.
12. Upon the parents moving from South Elgin, and if Minor residing with his Aunt, the Minor shall move/reside with parents.

DISPOSAL ORDER AND CONDITIONS OF SUPERVISION/PROBATION/CONDITIONAL DISCHARGE

This matter coming before the Court having jurisdiction of the subject matter and the parties, the Court FINDS: the MINOR has been adjudged a delinquent, in compliance with all statutory requisites.

IT IS HEREBY ORDERED:

☒ PROBATION (204) ☐ SUPERVISION (208) ☐ CONDITIONAL DISCHARGE (206) is granted to the above mentioned minor, John Whalen, for 60 months, until 2-16-05, for petition/counts ONE AND THREE, AGGRAVATED CRIMINAL SEXUAL REPORT [ASSAULT] subject to the terms and conditions listed below:

YOU HAVE BEEN GRANTED THE PRIVILEGE OF PROBATION/SUPERVISION/CONDITIONAL DISCHARGE. IF YOU FAIL TO OBEY THE FOLLOWING CONDITIONS, YOU AND/OR YOUR PARENTS MAY BE FOUND IN CONTEMPT OF COURT, YOUR DISPOSITIONAL ORDERS MAY BE MODIFIED OR REVOKED AND YOU CAN BE RESENTENCED ON THE OFFENSE FOR WHICH YOU RECEIVED PROBATION/SUPERVISION/ CONDITIONAL DISCHARGE. YOUR CONDITIONS ARE AS FOLLOWS:

1. you are not to violate any municipal ordinance, state statute or federal law.
2. you and your parent(s) are to fully cooperate with the Probation Officer obeying all directives of the Probation Officer, including, but not limited to, all scheduled visits at the probation office, in your home or elsewhere. You must appear in Court, on any date and at the time as directed by your Probation Officer.
3. You and/or your parent(s) are to inform the Probation Officer within 48 hours of any changes in the

minor's place of residence, phone number, school or employment status. You and your parent(s) are to notify the Probation Officer of any rule violation and/or Police contacts within 48 hours.

4. You are not to leave the State of Illinois without permission of the Probation Officer.

5. You are to reside with your parent(s) or custodian(s) and obey their rules and requirements.

6. You are not to possess a firearm or weapon of any kind.

7. You are subject to 730 ILCS 5/5-6-4(3i) regarding the imposition of intermediate sanctions by your Probation Officer.

8. ☒ SUBSTANCE: (OSUB)- You are to refrain from having in your body the presence of alcohol or any other drug prohibited by the Cannabis Control Act or the Illinois Controlled Substance Act, unless prescribed by a physician. You shall submit samples of your blood, hair, breath or urine for tests to determine the presence of alcohol or any illicit substance at the discretion of your Probation Officer. You may be required to pay for such tests.

[Inapplicable portions omitted]

☒ 18. COUNSELING: (OCP)- You and your family are to cooperate with and successfully complete any counseling programs, as directed by your Probation Officer, including but not limited to the following: Individual, family group, substance abuse or sex offender counseling.

(see other pages of this order)

Probation fees waived while Minor is in placement.

Entered: 2-16-00 Judge /s/ B. Puklin

I have read these rules, will obey them and will inform the Probation Officer of any violations.

Minor: _____ Date: _____

Parent/Guardian: _____ Date: _____

Parent/Guardian: _____ Date: _____

Phone: _____

Phone: _____

Treatment and Placement Recommendations: Action Steps

Each treatment recommendation included in the initial report is reiterated here along with greater details regarding how each step would be carried out.

1. That John be ordered to enter into, actively engage in, and successfully complete a program of treatment for sexually abusive individuals. Such a program should be provided by individuals known to the Court to be trained to provide sexual offender-specific individual, group and family treatment;

Intensive out-patient services, specific to sexual offending are warranted in this case. John's residence is up to the Court but a return to his parents or Mr. and Mrs. Grant is seen by his therapist as appropriate at this time. Both the Whalen's and the Grants have expressed a clear desire to comply with all supervision and treatment requirements including re-structuring their houses and lives in order to provide mandated supervision.

Prior to John's return to the community, he should be accepted into a treatment program of the family's and Court's choosing. Such treatment must be by an individual and/or agency known to have expertise in working with this population of youth and able to offer individual, group, and family therapy as well as case management services and advocacy for both the youth and the victim.

Treatment should include monthly reports to the Court via the Department of Court Services.

It should be clearly spelled out in John's legal sanctions that he must "actively engage in, and successfully complete" treatment so as to clearly communicate that attendance in treatment without active efforts to work in

the program is unacceptable and can be cause for removal from treatment and a return before the Judge for a violation.

2. That John be involved in weekly individual and group treatment. The family should also be involved in treatment as required by the treatment team;

Treatment direction and modalities used are determined by the treatment personnel but should minimally include weekly individual and group therapy. How and when family's[sic] are included and the reasons for their inclusion must be left up to the discretion of the therapists. All family members and those individual entrusted with care taking responsibility must voluntarily agree to cooperate with the directives of the treatment personnel.

3. That such treatment include a cognitive-behavioral component in order to address the more obsessive features to John's thinking processes;

Specific therapy techniques have shown themselves to ameliorate certain behaviors under the direction and guidance of trained therapists. These should be employed as needed.

4. That John be monitored for possible pharmacological treatment of obsessive-compulsive behaviors if additional assistance in controlling this feature of John's thought processes is indicated.

5. That John also be involved in treatment that will enhance his understanding of sexual abuse, sexuality in general; empathy and consideration for others; appropriate recognition of and expression of feelings; and anger control and management;

These are factors that should be included in the treatment program curriculum.

6. That should John be provided with probation and offered out-patient treatment, he be required to see a probation office [sic] at least twice monthly to reiterate the seriousness with which John's behavior is seen by society and the Court;

In order to insure that John does not lose sight of the significance of his behavior and the fact that it is viewed by society as extremely detrimental to the health and well-being of others, intensive monitoring by the Court via the Court Services Department of Probation throughout the length of John's probation is indicated. Changes in the intensity of such monitoring should be a result of a joint decision between the treatment personnel and Court Service Personnel.

It would be in the best interests of John and the community that a period of incarceration be determined but stayed by the Court as a potential recourse should John fail to comply with the terms of his probation and/or treatment expectations. Such a period should be not less than 14 days. If John were required to serve such incarceration at some point in the future, upon release he would be expected to continue treatment and comply with all requirements.

7. That John have no contact with the five children identified in this case as victims;

Contact may be resumed in accordance with the treatment personnel at a later date if it is warranted by the victims in order to assist on their healing. It is not unusual that in the course of victim therapy, the victim of sexual abuse requires a meeting with their offender. In offender treatment, victim apologies are also an integral component of treatment and, if the victim is pre-

pared and willing to hear the apology, contact is warranted. This process is, however, completely controlled by the victim of the abuse and no desire by the offender to have such contact is taken into consideration.

8. That John have no unsupervised contact with any youth under the age of ten. Supervision must be provided by adults who have knowledge of Johns [sic] sexually abusive behavior; recognize and affirm its seriousness; agree to a specific supervision plan; and have been approved by the treatment therapists).

see below

9. That a written safety plan be put into effect immediately upon John's discharge to the community, outlining details such as:

Which adults arē appropriate to provide supervision. Such a determination is made by the parents and the treatment staff based on contact by the treatment staff with those individuals. Factors such as the individuals acceptance of John as having committed an act of sexual violence, the need for monitoring as opposed to a belief that "he's learned his lesson and won't do this again" are important attitudes to be assessed in determining the appropriateness of the supervisor.

A determination of who else in John's environment is required to know of the need for increased monitoring and the reasons why should be included in the plan. School, church groups, organized activities such as scouts are typical institutions or activities requiring notification. All notification should take place through the parents only with corroboration obtained by the treatment personnel.

John's physical contact with children should be clearly delineated. Wrestling and similar contacts are prohibited. John is not to have any supervisory responsibility over children nor is he to be involved in bathing or changing young children. His contact with younger children in day to day activities is to be monitored and when such monitoring cannot occur, is to be curtailed.

John's access to the Internet, TV, videos, movies and music is to be monitored. His caretakers are expected to monitor their phone bills, the mail and any other items where John may gain access to sexual materials.

Such a written plan is to be re-evaluated every three months and changes made as necessary. Copies of the plan are to be kept in an easily accessible spot in John's home and other homes where he may live or visit, as well as provided to the Court.

I hope this addition to John's Specialized Assessment offers the additional clarification desired. Please to not hesitate to contact me should you require additional information.

Respectfully,

/s/ Therese Wrona

Therese Wrona

/s/ B. Puklin

Judge

APPENDIX B:
Stay Order of Illinois Appellate Court

[SEAL]

STATE OF ILLINOIS APPELLATE COURT
SECOND DISTRICT

OFFICE OF THE CLERK
847/695-3750
847/895-0092 TDD

APPELLATE COURT BUILDING
ELGIN, ILLINOIS
60120-5558

Appeal from the Circuit Court of County of Kane

Trial Court No.: 99JD950

THE COURT HAS THIS DAY, 09/14/00, ENTERED THE FOLLOWING ORDER IN THE CASE OF:

Gen. No.: 2-00-0360

Cons. Cases: 2-00-0432

In the Interest of: J.W., a minor

Motion by respondent-appellart *[sic]*, J. W. a minor, for stay of conditions of probation to register as a sex offender. Motion by respondent-appellant to stay the requirement the minor register as a sex offender pending disposition of this appeal is allowed.

LOREN J. STROTZ
Clerk

cc:
Brittain & Ketchman, P.C.
Jeffrey B. Rifken
Josette Skelnik
Honorable David R. Akemann
Martin P. Motz, Deputy Director

APPENDIX C:
Rule 23 Order of Illinois Appellate Court

Nos. 2-00-0360 & 2-00-0432 cons.

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re J.W., a Minor	)	Appeal from the
	)	Circuit Court
	)	of Kane County.
	)	
	)	No.99--JD--950
(The People of the State	)	
of Illinois, Petitioner-	)	Honorable
Appellee, v. J.W.,	)	Barry E. Puklin,
Respondent-Appellant).	)	Judge, Presiding.

RULE 23 ORDER

Pursuant to a guilty plea, respondent, J.W., a 12-year-old, was adjudicated delinquent on two counts of aggravated criminal sexual assault (720 ILCS 5/12--14 (b)(i) (West 1998)). The factual basis for the plea provided that respondent engaged in oral sex with two seven-year-old boys who lived in respondent's community in South Elgin. These assaults occurred between May 1, 1999, and November 4, 1999. Respondent was subsequently sentenced to five years' probation, required to register as a sex offender, and ordered to seek treatment at a residential facility. Respondent was released from the treatment facility, and on August 22, 2000, respondent was ordered not to reside in or visit South Elgin. On appeal, respondent argues that (1) requiring a 12-year--old to register as a sex offender pur-

suant to the Sex Offender Registration Act (Registration Act) (730 ILCS 150/1 *et seq.* (West 1998)) is unconstitutional and (2) prohibiting respondent from residing in or visiting South Elgin is overly broad and void. We affirm.

During the time that these crimes were committed, the legislature addressed how the Registration Act affects juvenile sex offenders. The Registration Act provides that a juvenile sex offender is a minor who has been adjudicated delinquent of, among other things, aggravated criminal sexual assault. 730 ILCS 150/2(A--5), (B) (1) (West 2000). A minor who has been adjudicated delinquent of aggravated criminal sexual assault is considered a "sexual predator," and a "sexual predator" must register as a sex offender for his or her natural life. 730 ILCS 150/2(E)(1), 7 (West 2000).

Under the Sex Offender and Child Murderer Community Notification Law (730 ILCS 152/101 *et seq.* (West 2000)), the Department of State Police is required to keep a database for the purpose of identifying sex offenders and making information about sex offenders available to the public. 730 ILCS 152/115 (West 2000). The appropriate law enforcement agency is responsible for disclosing the offender's name, address, date of birth, and adjudication to, among others, school boards, school principals, and anyone who is likely to encounter a sex offender. 730 ILCS 152/120 (a) , (b) (West 2000).

In his brief, respondent suggests that requiring a 12-year-old to register as a sex offender is a violation of substantive due process because the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/1--1 *et seq.* (West 1998)) was designed to rehabilitate minors, not punish them. Respondent claims that requiring him to register as a sex offender violates the purpose of the Juvenile

Act and is not rationally related to the evils the General Assembly sought to remedy with the Registration Act. Respondent also argues that he will be humiliated and stigmatized if he is required to register as a sex offender. The State argues that respondent's substantive due process argument is waived.

Our supreme court has recognized that the constitutionality of a statute may be challenged at any time, regardless of whether the constitutionality of the statute was challenged in the trial court. *People v. Bryant*, 128 Ill. 2d 448, 454 (1989). This rule applies when the statute under which a defendant was convicted is being challenged as unconstitutional. *People v. Starnes*, 273 Ill. App. 3d 911, 913 (1995). However, when the statute under attack is collateral to the defendant's conviction, then the waiver rule applies. See *Starnes*, 273 Ill. App. 3d at 913-14 (court addressed constitutional issue the defendant raised that was related to the Child Sex Offender Registration Act, but noted that waiver could apply in this cause because the defendant challenged the constitutionality of the Child Sex Offender Registration Act and failed to raise the issue in the trial court).

Nevertheless, waiver is a limitation on the parties and not the courts. *In re C.R.H.*, 163 Ill. 2d 263, 274 (1994). A reviewing court may choose to address a waived issue if addressing the waived issue is necessary to provide a just result. *In re C.R.H.*, 163 Ill. 2d at 274. Here, we choose to address the substantive due process issue that respondent has raised for the first time on appeal.

A statute is presumed constitutional, and the party who challenges the statute bears the burden of establishing that the statute is invalid. *People v. Malchow*, 193 Ill. 2d 413, 418 (2000). The reviewing court must

uphold the constitutionality of the statute if it can reasonably construe the statute in a constitutional way. *Malchow*, 193 Ill. 2d at 418. The reviewing court will review the constitutionality of the statute under a *de novo* standard. *Malchow*, 193 Ill. 2d at 418.

In addressing respondent's substantive due process claim, we must (1) identify the public interest that the statute seeks to protect; (2) determine whether the statute is reasonably related to that public interest; and (3) decide whether the means employed to protect the public interest are reasonable. *People v. Stork*, 305 Ill. App. 3d 714, 721 (1999). Our supreme court has recognized that an earlier version of the Registration Act was designed to assist law enforcement officers in the protection of children. *People v. Adams*, 144 Ill. 2d 381, 390 (1991). Our supreme court also has concluded that the previous version of the Registration Act was reasonably related to that public interest. *Adams*, 144 Ill. 2-d at 390. In reaching this conclusion, the court noted that there is a direct relationship between the disability, the registration of sex offenders, and the purpose of the statute, which is to protect children. *Adams*, 144 Ill. 2d at 390. The court further determined that there is nothing unreasonable about the statute's method of serving the public interest. *Adams*, 144 Ill. 2d at 390. Following the reasoning of the court's decision, we conclude that respondent's substantive due process argument must fail. We further note that applying the Registration Act to minors does not change this result because one of the stated purposes of the Juvenile Act is to protect the public. 705 ILCS 405/1--2(1) (West 1998). Thus, the purpose behind the Registration Act is consistent with at least one of the stated purposes of the Juvenile Act.

We next must determine whether we can address the procedural due process claim that respondent appeared to raise when he moved to file additional au-

thority with this court. The State argues that this court should not address the procedural due process challenge that respondent has raised because allowing respondent to raise this issue after the briefs were filed violates Supreme Court Rule 341(e)(7) (177 Ill. 2d R. 341 (e)(7)). We conclude that respondent's procedural due process claim is waived. However, we note that even if we addressed respondent's claim fully, respondent would not succeed on a procedural due process argument.

Specifically, respondent would have to first establish a protected liberty or property interest. See *Stork*, 305 Ill. App. 3d at 719. Respondent appears to argue that his liberty or property interest is his reputation. Other states that have addressed the implication of similar Registration Acts on minors have found that a minor's reputation is not a property or liberty interest. See *In re S.M.M.*, 558 N.W.2d 405, 406 (Iowa 1997); *In re M.A.H.*, 20 S.W.3d 860, 864 (Tex. App. 2000). We agree.

Respondent next argues that the condition of his probation that prevented him from residing in or visiting South Elgin is overly broad and, thus, void. Respondent notes that he never filed a post-trial motion raising this issue, but he argues that he may challenge the probationary condition at any time because the condition is void. See *People v. Didier*, 306 Ill. App. 3d 803, 806-07 (1999). We determine that this condition of respondent's probation is not void. Thus, waiver could be applied here. Nevertheless, we choose to address the issue. See *In re C.R.H.*, 163 Ill. 2d at 274.

In considering this condition of the minor's probation, we note that at the dispositional hearing, the father testified that the parents had placed their South Elgin home up for sale and would be voluntarily removing the family from the Village of South Elgin.

They raised no objection to the prohibitions and concurred that under the circumstances the restrictions would be appropriate.

Under section 5--715 (2)(r) of the Juvenile Act, a court may, as a condition of probation, require a minor to refrain from entering into a designated geographic area. 705 ILCS 405/5--715 (2)(r) (West 1998). In order for a condition of probation to be reasonable (1) the condition must foster rehabilitation; (2) the value to the public by imposing the condition must manifestly outweigh any impairment to the minor's constitutional rights; and (3) there must not be alternative and less constitutionally restrictive ways to accomplish the benefits of probation. *In re J.G.*, 295 Ill. App. 3d 840, 843 (1998). A trial court's probationary order restricting the area in which a minor may go will not be reversed absent an abuse of discretion. *In re J.G.*, 295 Ill. App. 3d at 842.

Here, we determine that the restriction fosters rehabilitation. By prohibiting respondent from entering South Elgin, respondent will not be near the children that he abused. Thus, hopefully, respondent will not be tempted to engage in the type of conduct that led to his sentence. Under the second factor, we conclude that the value to the public will manifestly outweigh any impairment to respondent's rights. The evidence presented at respondent's sentencing hearing revealed that the seven-year-old victims of the crimes, the victims' families, and the neighborhood were greatly disturbed and affected by respondent's actions. We note too that the restriction is also necessary to protect respondent. The evidence revealed that respondent's family had been threatened as a result of these crimes.

In considering the last factor, we determine that there are not any alternative and less restrictive ways to accomplish the benefits of probation. In reaching this conclusion, we note that respondent enticed these young victims for several months and started to recruit younger victims. Respondent argues that instead of banishing him from South Elgin the trial court could have required that, among other things, respondent be accompanied by a parent whenever respondent was out in the community. Although the record suggests that respondent's parents did not try to minimize the severity of respondent's activities and did care for respondent, the fact remains that these offenses were committed while respondent was under the care of his parents. Thus, where, as here, the parents concur in the restriction we determine that the trial court did not abuse its discretion when it prohibited respondent from living in or visiting South Elgin.

For these reasons, the judgment of the circuit court of Kane County is affirmed.

Affirmed.

GROMETER, J., with HUTCHINSON, P.J., and RAPP, J., concurring.

APPENDIX D:
Opinion of the Supreme Court of Illinois

Docket No. 92116-Agenda 7-May 2002.

In re J.W., a Minor
(The People of the State of Illinois,
Appellee, v. J.W., Appellant).

Opinion filed February 21, 2003.

JUSTICE THOMAS delivered the opinion of the court:

Respondent, J.W., a 12-year-old boy, was adjudicated delinquent following his admission to two counts of aggravated criminal sexual assault (720 ILCS 5/12-14(b)(i) (West 1998)), and was sentenced to a term of five years' probation. Among the conditions of his probation, J.W. was ordered to register as a sex offender. In addition, J.W. was prohibited from residing in or going to the Village of South Elgin, Illinois, the community where J.W. lived and where the aggravated criminal sexual assaults took place.

J.W. appealed two of the conditions of his probation contending that: (1) requiring a 12-year-old child to register as a sex offender is unconstitutional; and (2) prohibiting J.W. from residing in or visiting South Elgin as a condition of probation is overly broad and void. The appellate court affirmed the trial court's order. Nos. 2-00-0360, 2-00-0432 cons. (unpublished order under Supreme Court Rule 23). This court granted J.W.'s petition for leave to appeal (177 Ill. 2d R. 315). We also granted the motion of the Bluhm Legal Clinic of Northwestern University Law School and the Edwin F. Mandel Legal Aid Clinic of the University of Chicago Law School for leave to file a brief as *amicus curiae*.

BACKGROUND

The State filed its petition for adjudication on November 10, 1999, alleging that J.W. had committed aggravated criminal sexual assaults against two seven-year-old boys, R.We. and J.P. On February 14, 2000, J.W. pled guilty to two counts of aggravated criminal sexual assault in exchange for the State's agreement to withdraw two other counts of aggravated criminal sexual assault. There was no agreement among the parties as to sentencing. Consequently, a sentencing hearing was held in February 2000.

At J.W.'s sentencing hearing, Dr. Kevin Breen, a psychiatrist, testified that he met with J.W. and his parents one time in December 1999, for approximately one hour, to determine whether J.W. was a danger to anyone else. Dr. Breen's report of this examination was entered into evidence. The report indicated that J.W. had admitted to five episodes where he convinced R.We. and J.P. to have oral-genital contact with one another and with him. J.W. denied that the boys were physically coerced, but admitted he used verbal coercion. J.W.'s parents revealed to Dr. Breen that J.W. also had exposed himself on one occasion to a five-year-old boy. J.W. denied having been physically, sexually or emotionally abused, but admitted that he had seen his father's sexually explicit magazines.

Dr. Breen concluded in his report that J.W. was minimizing his sexual encounters with young boys, noting that J.W. had not mentioned the incident with the five-year-old boy. According to the report, Dr. Breen's diagnosis of J.W. was paraphilia, not otherwise specified. Paraphilia is where a person engages in sexual activity or sexual acts that are not sanctioned by society. The diagnosis would have been pedophilia with a

sexual attraction to males, except that J.W. was not 16 years old, as required by the standard criteria.

Dr. Breen testified at J.W.'s sentencing hearing that he was not aware of any incidents of anal sex or anal penetration between J.W. and his victims, nor was he aware of allegations that J.W. had introduced a dog into his sexual acts. Dr. Breen's recommendations for the treatment of J.W. included medication, cognitive behavioral therapy, and residential treatment. Dr. Breen recommended residential treatment given the frequency of relapse among individuals with sexual disorders. Dr. Breen testified that, given the frequency of relapse, J.W. would present a risk to the community if he was not placed in residential treatment.

David Berg, an investigator with the Child Advocacy Center of the Kane County State's Attorney's office, testified at the sentencing hearing that he investigated the case concerning J.W. Berg became involved in the case after the family of R.We. made a police report alleging that J.W. had put his mouth on R.We.'s penis and had R.We. put his mouth on J.W.'s penis. These incidents took place under the deck of a neighbor's house and in J.W.'s home. R.We. said the sexual contact occurred between 5 and 10 times. R.We. did not tell anyone about the incidents because he feared retribution from J.W.

Berg also interviewed the other victim, J.P. J.P. lived next door to J.W. J.P. told Berg that J.W. had put his mouth on J.P.'s penis and that J.W. had put his penis in J.P.'s mouth. J.W. also touched the penises of both victims.

In addition to the two victims, a five-year-old boy saw J.W. expose himself, and R.We.'s six-year-old sister witnessed an incident of oral sex between J.W. and R.We.

Berg initially spoke with J.P.'s stepmother on November 5, 1999. In a follow-up conversation several days later, J.P.'s stepmother told Berg that J.P. had forgotten to tell him something, and indicated that J.W. had placed his penis in J.P.'s anus. Subsequently, both J.P. and R.We. told Berg there were several occasions where J.W. placed his penis in their anuses. J.P. told Berg that he did not tell anyone about these incidents because J.W. told him not to tell.

Berg testified that approximately one week prior to the sentencing hearing, he again met with R.We., who told Berg that J.W. had his dog lick the penises of both boys. J.W. also told the two victims to try to penetrate the dog's anus with their penises, but they were unable to do so. The boys did observe J.W. penetrate the dog's anus. The incidents with the dog took place in J.W.'s home. In addition, both boys related that J.W. had directed them to penetrate one another, but they were unable to do so. These events took place under the deck of the neighbor's home and at J.W.'s home.

Therese Wrona, a therapist, testified that she had been involved in the treatment of sexually abusive juveniles for 10 years. Wrona first saw J.W. on December 7, 1999, and in January 2000 began seeing him at least once a week. Wrona testified that J.W. was a danger to the community "to a certain degree." Wrona recommended probation for J.W., stating that "the longer the legal system hangs on to individuals such as [J.W.], the better." In addition, Wrona recommended a course of treatment specialized for individuals that have problems with sexual aggression. Wrona also stated that J.W. required 24-hour monitoring and supervision by a person that understood the nature and seriousness of J.W.'s problem. J.W.'s school should be informed concerning J.W.'s history of sexually aggressive behavior so that the school could monitor J.W. and protect other

students. Wrona further said that J.W. should not be around younger children, or even children his own age, unless an adult who is aware of J.W.'s problems is present. Wrona's opinion was that J.W. should be allowed to remain in the community and should not be placed in residential treatment. With regard to the protection of the community, Wrona believed that J.W. could return to his home in South Elgin, although given the publicity concerning the case, Wrona believed it might not be in J.W.'s best interest to return to his home.

Wrona testified that J.W. "groomed" his victims, meaning that he approached the victims to assess his likelihood of committing the sexual abuse. J.W. sought out his victims and selected his victims based upon their youth and their trust in him. Wrona said that J.W. initially did not feel any guilt, but she believed J.W. was beginning to appreciate the seriousness of his acts.

J.W.'s parents testified at the sentencing hearing and indicated their willingness to engage in intensive supervision and monitoring of J.W. if he was allowed to return home. J.W.'s parents also indicated that if J.W. was allowed to return home, they intended to sell their home in South Elgin and move to a different neighborhood.

J.W.'s aunt, Monica Grant, testified on behalf of J.W. that she resides with her husband in Elgin, Illinois. Grant stated that she and her husband were willing to let J.W. live with them and would take responsibility for his supervision.

At the conclusion of the sentencing hearing, J.W. made a statement on his own behalf apologizing to the victims. The trial court then noted that, because J.W. was under the age of 13, he could not be committed to the juvenile division of the Department of Corrections. See 705 ILCS 405/5-750(3) (West 2000). The trial court

also noted that, even though the State had recommended residential treatment for J.W., the State had not determined whether there was a treatment center willing and/or able to take J.W. Accordingly, the trial court placed J.W. on five years' probation and directed the probation officer to determine whether placement was available for J.W. J.W. was to be placed in residential treatment if such placement was available. If placement was not available, J.W. was prohibited from going back to South Elgin and was ordered to reside with his aunt, Monica Grant, until his parents moved out of South Elgin. J.W. also was ordered to register as a sex offender and to comply with AIDS/HIV testing pursuant to section 5-710 of the Juvenile Court Act of 1987 (705 ILCS 405/5-710 (West 2000)).

On March 1, 2000, the parties returned to court and informed the trial court that residential treatment had been found for J.W. Accordingly, an order was entered placing J.W. at the treatment center. Thereafter, in anticipation of J.W.'s imminent release from the treatment center, the trial court entered an order on August 22, 2000, providing that J.W. was to reside with Monica Grant upon release, and would be allowed to reside with his parents once they moved out of South Elgin.

J.W. then appealed the conditions of his probation requiring him to register as a sex offender and prohibiting him from entering or residing in South Elgin. The appellate court stated that J.W. was required to register as a sex offender for the rest of his natural life because he was considered a sexual predator under the Sex Offender Registration Act (Registration Act) (730 ILCS 150/1 *et seq.* (West 2000)). The appellate court then rejected J.W.'s claim that imposing a lifetime registration requirement on a 12-year-old offender violates substantive due process. The appellate court also held that the trial court did not abuse its discretion when it

prohibited J.W. from entering or residing in South Elgin, noting that J.W.'s parents had concurred in the restriction. In this court, J.W. again challenges the conditions of his probation requiring him to register as a sex offender and banishing him from the Village of South Elgin.

ISSUES

As a preliminary matter, we must address the State's claim that this Court does not have jurisdiction over this appeal because J.W. did not comply with Supreme Court Rule 604(d) (188 Ill. 2d R. 604(d)). Supreme Court Rule 604(d) (188 Ill. 2d R. 604(d)), provides, in pertinent part:

> "No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment." 188 Ill. 2d R. 604(d).

Recently, this court held that Rule 604(d) applies to juvenile proceedings. *In re A.G.*, 195 Ill. 2d 313 (2001). This court left open, however, the issue of whether a juvenile's failure to file a post-admission motion pursuant to Rule 604(d) serves as a jurisdictional bar to an appeal. *A.G.*, 195 Ill. 2d at 322. The State contends that this question must be answered in the affirmative, maintaining that, if Rule 604(d) applies to juvenile proceedings, its jurisdictional component also must apply to juvenile proceedings.

With regard to this case, the State notes that J.W. entered admissions to the two counts of aggravated

sexual abuse for which he was adjudicated delinquent, and that an admission in juvenile court is the equivalent of a guilty plea. See *In re A.G.*, 195 Ill. 2d 313, 316 (2001). J.W., however, did not file a motion to withdraw his admissions or to reconsider his sentence prior to filing his appeal. Because J.W. did not comply with Rule 604(d) prior to filing his appeal, the State contends that this court has no jurisdiction over J.W.'s appeal.

In response, J.W. states that, even if the filing of a motion pursuant to Rule 604(d) is a prerequisite to taking a delinquency appeal, Rule 604(d) does not bar his appeal because he is not seeking to challenge his plea or to reconsider his term of probation. Rather, he is contesting the constitutionality of two of the conditions of probation imposed by the trial court, namely, the condition that he register as a sex offender for the rest of his life and the condition barring him from entering the Village of South Elgin. J.W. claims that because these conditions are unconstitutional, they are void. J.W. maintains that a void sentence may be attacked at any time, even following a guilty plea and in the absence of a motion to vacate that plea.

We need not decide here the issue left open in *In re A.G.* We agree with J.W. that his challenge is to the constitutionality of two of the conditions of his probation, not to the imposition of probation itself. J.W. is not challenging his plea or his sentence of probation. Consequently, Rule 604(d) does not bar J.W.'s appeal.

The State then argues that, even if this court has jurisdiction over this appeal, J.W. has waived any challenge to the conditions of probation because he did not raise these issues in the trial court. J.W., however, maintains that a constitutional challenge to a statute may be made at any time.

J.W. is correct that, in general, a constitutional challenge to a criminal statute can be raised at any time. *People v. Bryant*, 128 Ill. 2d 448, 454 (1989). Accordingly, J.W. has not waived his constitutional challenges to the Registration Act even though he first raised those challenges in the appellate court.

J.W. first argues that the trial court's order requiring him to register as a sex offender for the rest of his natural life violates substantive due process and the proscription against double jeopardy, and constitutes cruel and unusual punishment in violation of the eighth amendment to the United States Constitution (U.S. Const., amend. VIII).

It is well settled that statutes are presumed constitutional and that a party challenging the constitutionality of a statute has the burden of establishing its invalidity. *People v. Wright*, 194 Ill. 2d 1, 24 (2000). This court reviews *de novo* the constitutionality of a statute. *People v. Malchow*, 193 Ill. 2d 413, 418 (2000).

At the outset, we must address the appellate court's finding that J.W. shall register as a sex offender for the rest of his natural life. In ordering J.W. to register as a sex offender, the trial court did not specify the duration of registration. The appellate court found that, given the nature of the charges for which J.W. was adjudicated delinquent, J.W. is a "sexual predator" as defined by the Registration Act, so that the duration of registration is for the rest of J.W.'s natural life.

In construing a statute, this court must ascertain and give effect to the legislature's intent in enacting that statute. *Collins v. Board of Trustees of the Firemen's Annuity & Benefit Fund*, 155 Ill. 2d 103, 110 (1993). To determine the intention of the legislature, we first examine the language of the statute, which is the most reliable indicator of the legislature's intent. *In re C.W.*, 199 Ill. 2d

198, 211 (2002). Where the statutory language is clear and unambiguous, a court must give effect to the statute as written without reading into the statute exceptions, limitations or conditions that the legislature did not express. *In re C.W.*, 199 Ill. 2d at 211-12. In addition, a statute must be read as a whole, and no word or paragraph should be interpreted so as to be rendered meaningless. *Collins*, 155 Ill. 2d at 111.

With the foregoing principles in mind, we must examine the definitions of "sexual predator" and "juvenile sex offender" as set forth in the Registration Act. Section 2 contains the definitions for purposes of that Act. Section 2(A) defines a "sex offender." 730 ILCS 150/2(A) (West 2000). Effective July 1, 1999, the Registration Act was amended to add, *inter alia*, the definition of a "juvenile sex offender." Section 2(A-5) of the Registration Act now provides that:

> " 'Juvenile sex offender' means any person who is adjudicated a juvenile delinquent as the result of the commission of or attempt to commit a violation set forth in item (B), (C), or (C-5) of this Section or a violation of any substantially similar federal, sister state, or foreign country law. For purposes of this Section, 'convicted' shall have the same meaning as 'adjudicated.' " 730 ILCS 150/2 (A-5) (West 2000).

J.W. falls within the definition of a juvenile sex offender because he was adjudicated delinquent as the result of the commission of a violation of item (B) of section 2, namely, aggravated criminal sexual assault. See 730 ILCS 150/2(B)(1) (West 2000).[1]

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[1] We note that the legislature recently amended the Registration Act to delete the separate definition of "juvenile sex of-

Also included within the definitions in section 2 is the more specific category of sexual predators. A "sexual predator" includes:

> "any person who, after the effective date of this amendatory Act of the 91st General Assembly is:
>
> (1) Convicted of a violation of any of the following Sections of the Criminal Code of 1961 and the conviction occurred after the effective date of this amendatory Act of the 91st General Assembly:
>
> * * *
>
> 12-14 (aggravated criminal sexual assault)[.]" 730 ILCS 150/2(E)(1) (West 2000).

Reading section 2(A-5) together with section 2(E) so that no word or paragraph is rendered meaningless, we conclude that J.W. clearly qualifies as a sexual predator under the Registration Act. Section 2 (A-5) provides that "convicted" has the same meaning as "adjudicated," for purposes of section 2. Section 2 defines a sexual predator as a person who has been "convicted" of aggravated criminal sexual assault. This statutory language is clear and unambiguous, so we give effect to the statute as written. J.W. has been adjudicated delinquent, or "convicted," as the result of the commission of aggravated criminal sexual assault. J.W. therefore falls within the definition of a sexual predator.

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fender" and to specifically provide that a "sex offender" means any person who is "adjudicated a juvenile delinquent as the result of committing or attempting to commit" certain specified acts, including aggravated criminal sexual assault. Pub Act 92-828, eff. August 22, 2002 (adding 730 ILCS 150/2(A)(5)).

Section 3 of the Registration Act provides that sex offenders and sexual predators have a duty to register as required by the Department of State Police. 730 ILCS 150/3 (West 2000). With regard to the duration of registration, section 7 of the Registration Act provides, in pertinent part:

> "A sexually violent person or sexual predator shall register for the period of his or her natural life after conviction or adjudication if not confined to a penal institution, hospital, or other institution or facility, and if confined, for the period of his or her natural life after parole, discharge, or release from any such facility. Any other person who is required to register under this Article shall be required to register for a period of 10 years after conviction or adjudication ***." 730 ILCS 150/7 (West 2000).

Generally, then, a juvenile sex offender would fall within the portion of section 7 that requires registration for a period of 10 years after adjudication. However, with regard to juvenile sex offenders who also are considered sexual predators, the duration of registration is for natural life. Consequently, we find that the appellate court correctly determined that J.W. is a sexual predator so that the duration of J.W.'s registration is for the rest of his natural life.

In so holding, we note that J.W. has submitted as additional authority a recent decision of the appellate court finding that juvenile sex offenders are not required to register under the Registration Act. *In re Nicholas K.*, 326 Ill. App. 3d 497, 500 (2001). The *Nicholas K.* court based its finding on the fact that section 3 of the Registration Act, concerning the duty to register,

does not specifically refer to juvenile sex offenders. *Nicholas K.*, 326 Ill. App. 3d at 500.

The additional authority submitted by J.W. does not change our holding in this case. Although section 3 of the Registration Act does not specifically refer to juvenile sex offenders, section 3 does provide that sex offenders and sexual predators shall register. 730 ILCS 150/3 (West 2000). Without addressing whether J.W. would be required to register in any event because he is a sexual predator, we note that a juvenile sex offender is a sex offender, *albeit* a specific category of sex offender. Juvenile sex offenders therefore are included within the larger category of sex offenders required to register.[2]

This conclusion is supported by the legislative debates concerning House Bill 2721, which added the definition of juvenile sex offender to the Registration Act. Specifically, Representative Klingler explained to the House of Representatives that the bill "requires juveniles who are adjudicated delinquent to register." 91st Ill. Gen. Assem., House Proceedings, March 10, 1999, at 143 (statements of Representative Klingler). Likewise, Senator Klem explained to the Senate that the

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[2] The recent amendments to the Registration Act also added the requirement that a sex offender as defined in section 2 or a sexual predator shall provide the Department of State Police with accurate information when registering, including information concerning his "school attended." Pub. Act 92-828, eff. August 22, 2002 (amending 730 ILCS 150/3(a) (West 2000)). A sex offender or sexual predator further is required to register with the chief of police in each of the municipalities in which he or she attends school and with the sheriff in each of the counties in which he attends school. Pub. Act 92-828, eff. August 22, 2002 (amending 730 ILCS 150/3(a)(1), (a)(2) (West 2000)).

bill by adding the definition of juvenile sex offender as well as other definitions "imposes registration requirements of those persons." 91st Ill. Gen. Assem., Senate Proceedings, April 26, 1999, at 52 (statements of Senator Klem).

The conclusion that juvenile sex offenders are required to register is further supported by examining the Registration Act in conjunction with the corresponding Sex Offender and Child Murderer Community Notification Law (Notification Law) (730 ILCS 152/101 *et seq.* (West 2000)). The Notification Law provides that the Department of State Police is to establish and maintain a sex offender database of those persons registered as sex offenders under the Registration Act. 730 ILCS 152/115 (West 2000). The Notification Law expressly includes juvenile sex offenders. See 730 ILCS 152/105, 120(e) (West 2000).

Clearly, then, juvenile sex offenders do fall within the purview of section 3 of the Registration Act and are required to register. Accordingly, the appellate court properly concluded that J.W. is required to register as a sex offender for the rest of his natural life.

We next address J.W.'s claim that an order requiring him to register as a sexual offender for the rest of his natural life violates substantive due process. When confronted with a claim that a statute violates the due process guarantees of the United States and Illinois Constitutions, courts first must determine the nature of the right purportedly infringed upon by the statute. *In re R.C.*, 195 Ill. 2d 291, 302 (2001). Where the statute does not affect a fundamental constitutional right, the test for determining whether the statute complies with substantive due process is the rational basis test. *People v. Wright*, 194 Ill. 2d 1, 24 (2000). To satisfy this test, a statute need only bear a rational relationship to the

purpose the legislature sought to accomplish in enacting the statute. *People v. R.G.*, 131 Ill. 2d 328, 342 (1989). Pursuant to this test, a statute will be upheld if it "bears a reasonable relationship to a public interest to be served, and the means adopted are a reasonable method of accomplishing the desired objective." *People v. Adams*, 144 Ill. 2d 381, 390 (1991).

J.W. does not argue, nor do we find, that the statute at issue affects a fundamental right. Accordingly, we analyze the statute at issue using the rational basis test. In *People v. Adams*, we noted that an earlier version of the Registration Act was passed "in response to concern over the proliferation of sex offenses against children" and was designed to aid law enforcement agencies by requiring sex offenders to register with local law enforcement authorities. *Adams*, 144 Ill. 2d at 386. The intent of the legislature in enacting the Registration Act was "to create an additional method of protection for children from the increasing incidence of sexual assault and sexual abuse." *Adams*, 144 Ill. 2d at 387.

In response to an adult defendant's claim that the Registration Act violated his right to substantive due process, we held that the public interest to be served by the Registration Act was the assistance of law enforcement in the protection of children. *Adams*, 144 Ill. 2d at 390. We further held that the Registration Act served that purpose by providing officers ready access to information on known child sex offenders. *Adams*, 144 Ill. 2d at 390. We concluded that there was nothing unreasonable in the statute's method of serving its purpose given the direct relationship between the registration of sex offenders and the protection of children. *Adams*, 144 Ill. 2d at 391. Accordingly, the statute satisfied the requirements of substantive due process. *Adams*, 144 Ill. 2d at 391.

Subsequently, we upheld a constitutional challenge to the Notification Law. See *People v. Malchow*, 193 Ill. 2d 413, 430 (2000). In *Malchow*, we held that the purpose of the Notification Law, like the Registration Act, was the protection of the public from sex offenders. *Malchow*, 193 Ill. 2d at 420.

In the context of a 12-year-old sex offender, the public interest to be served by the Registration Act remains unchanged. The public interest is to assist law enforcement in the protection of the public from juvenile sex offenders. The Registration Act as applied to a 12-year-old child serves that public interest by providing police officers ready access to information on known juvenile sex offenders.

J.W. acknowledges that the public interest the Registration Act is intended to serve is the protection of the public from sex offenders. J.W. argues, however, that in contrast to an adult offender or even a juvenile that could be charged and tried as an adult, requiring a 12-year-old child to register as a sex offender for the rest of his life is not a reasonable method of accomplishing the objective of protecting the public. J.W. observes that juveniles traditionally have been viewed as less culpable than adults and as more amenable to rehabilitation and treatment. J.W. argues that imposing a lifetime registration requirement on a 12-year-old child is at odds with the purpose and policy of the Juvenile Court Act (705 ILCS 405/1-1 *et seq.* (West 2000)).

J.W. maintains that it is not reasonable to hold a child that has been treated in the juvenile court system, and could only be treated in the juvenile court system, to an adult standard of reporting and registration for the rest of his life. J.W. observes that among the purposes and policies of the Juvenile Court Act are the protection and the rehabilitation of minors. J.W. also cites

In re Nicholas K., which in finding that juvenile sex offenders are not required to register, concluded that requiring a delinquent juvenile to register as a sex offender is inconsistent with the purposes of the Juvenile Court Act. *In re Nicholas K.*, 326 Ill. App. 3d at 500. The *Nicholas K.* court observed that the overriding purpose of the Juvenile Court Act is to promote the minor's best interest and to correct, not punish. *In re Nicholas K.*, 326 Ill. App. 3d at 500-01.

It is true that one of the purposes of the Juvenile Court Act is the rehabilitation of the minor. See 705 ILCS 405/5-101(1)(c) (West 2000). However, effective January 1, 1999, the purpose and policy section of the Juvenile Court Act was amended to provide, in pertinent part:

> "It is the intent of the General Assembly to promote a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system that will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively. To effectuate this intent, the General Assembly declares the following to be important purposes of this Article:
>
> (a) To protect citizens from juvenile crime.
>
> (b) To hold each juvenile offender directly accountable for his or her acts." 705 ILCS 405/5-101(1)(a), (1)(b) (West 2000).

This court has recognized that the amendments to the purpose and policy section of the Juvenile Court Act represent a fundamental shift from the singular goal of rehabilitation to include the overriding concerns of protecting the public and of holding juveniles ac-

countable for violations of the law. *In re A.G.*, 195 Ill. 2d 313, 317 (2001). Indeed, confronted with a similar issue, the Supreme Court of Delaware recognized:

> "[A]lthough we are aware that the juvenile justice system places emphasis on the best interests of the child, sex offenders of any age present unique problems. The General Assembly enacted the Sex Offender Registration Statute in an effort to protect society from both the adult and the youthful sex offender." *Helman v. State*, 784 A.2d 1058, 1079 (Del. 2001).

Given the shift in the purpose and policy of the Juvenile Court Act to include the protection of the public from juvenile crime and holding juveniles accountable, as well as the serious problems presented by juvenile sex offenders, we find no merit to J.W.'s claim that requiring him to register as a sex offender for life is at odds with the purpose and policy of the Juvenile Court Act.

Nonetheless, in support of his claim that the registration of a 12-year-old sex offender is not reasonable, J.W. also contends that there are other less offensive but equally effective means of protecting the public from juvenile sex offenders. For example, J.W. notes that even though he could not be subject to incarceration for more than 30 days due to his age (see 705 ILCS 405/5-710(1)(b) (West 2000)), his probationary period must be at least five years (see 705 ILCS 405/5-715(1) (West 2000)). In addition, J.W. observes that a trial court may impose conditions of probation, including that: the minor obtain therapy and treatment; the minor's contact with his or her victims and other children be limited or prohibited; the minor be subject to a period of home confinement; and the minor's parents be subject to

monitoring or supervisory conditions. See 705 ILCS 405/5-715(2), 5-110 (West 2000).

J.W. concedes that the considerations at issue might be different if the registration was for a limited period of time, if dissemination of the information was limited in scope, or if the minor could be and was treated as an adult for purposes of criminal prosecution. In advancing this argument, J.W. reads the Notification Law as allowing the public unlimited access to information concerning juvenile sex offenders, including access via the Internet. J.W. maintains that requiring a 12-year-old child to register for the rest of his life as a sex offender and allowing the general public unfettered access to identifying information about that child is not a reasonable means of accomplishing the legislature's goal of protecting the public and is offensive to this country's fundamental precepts of justice.

We first observe that contrary to J.W.'s claim that the Notification Law gives the general public "immediate, unlimited, and permanent access to identifying information about him," the Notification Law actually strictly limits the availability of information with regard to juvenile sex offenders. Specifically, the Notification Law provides:

> "The Department of State Police and any law enforcement agency having jurisdiction may, in the Department's or agency's discretion, provide the information specified in subsection (b) [*i.e.*, offender's name, address, date of birth, offense], with respect to a juvenile sex offender, to any person when that person's safety may be compromised for some reason related to the juvenile sex offender." 730 ILCS 152/120(e) (West 2000).

Consequently, information concerning a juvenile sex offender may be disseminated to a member of the public only if that person's safety might be compromised for some reason and only in the appropriate agency's or department's discretion.[3] Information concerning juvenile sex offenders is not available over the Internet. We find, therefore, that the extremely limited dissemination of information concerning juvenile sex offenders supports a finding that the registration of juvenile sex offenders is a reasonable means of protecting the public.

In addition, although J.W. suggests alternate means of accomplishing the legislature's objective in this case, it is well settled that the rational basis test does not require that the statute be the best means of accomplishing the legislature's objectives. *People ex rel. Lumpkin v. Cassidy*, 184 Ill. 2d 117, 124 (1998). It is best left to the legislature and not the courts to determine whether a statute is wise or whether it is the best means to achieve the desired result. *Cassidy*, 184 Ill. 2d at 124. If there is any conceivable basis for finding a rational relationship, the statute will be upheld. *Cassidy*, 184 Ill. 2d at 124.

With the foregoing principles in mind, we must reject J.W.'s claim that the statute at issue violates substantive due process. Clearly there is a rational relation-

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[3] Section 120 of the Notification Law recently was amended to clarify that "The Department of State Police and any law enforcement agency having jurisdiction may, in the Department's or agency's discretion, only provide the information specified in subsection (b), with respect to an adjudicated juvenile delinquent, to any person when that person's safety may be compromised for some reason related to the juvenile sex offender." Pub. Act 92-828, eff. August 22, 2002 (amending 730 ILCS 152/120(e) (West Supp. 2001)).

ship between the registration of juvenile sex offenders and the protection of the public from such offenders. Requiring the registration of juvenile sex offenders, even where the offender is only 12 years old and the duration of registration is for life, is reasonable in light of the strict limits placed upon access to that information. Whether there are better means to achieve this result, such as limiting the duration of registration for all juvenile sex offenders including juvenile sexual predators, is a matter better left to the legislature.

As a final matter, we note that the *amici* assert that the lifetime registration and the notification requirements violate procedural due process under the Illinois and United States Constitutions. J.W., however, has not raised a procedural due process claim and in fact expressly stated that he was not challenging the Registration Act and the Notification Law on procedural due process grounds. *Amici* also claim that enforcement of the registration and notification requirements violate state and federal constitutionally protected privacy interests. Neither the State nor J.W., however, has raised a privacy issue in his brief to this court.

An *amicus curiae* is not a party to an action but rather is a "friend" of the court. *People v. P.H.*, 145 Ill. 2d 209, 234 (1991). Consequently, the sole function of an *amicus* is to advise or make suggestions to the court. *P.H.*, 145 Ill. 2d at 234. An *amicus* takes the case as he finds it, with the issues as framed by the parties. *P.H.*, 145 Ill. 2d at 234. This court need not pass on grounds of invalidity solely urged by an *amicus*. *P.H.*, 145 Ill. 2d at 234; accord *Hanrahan v. Williams*, 174 Ill. 2d 268, 281 (1996). Consequently, we decline to address the procedural due process and privacy issues raised by the *amici*.

J.W. next contends that requiring a 12-year-old child to register as a sex offender and allowing the public access to information concerning juvenile sex offenders violates the eighth amendment and the proscription against double jeopardy. The State argues that J.W. has waived this issue, noting that J.W. did not raise this issue in the trial court or the appellate court, nor did he raise this issue in his petition for leave to appeal to this court.

The State is correct that J.W. did not raise these constitutional challenges in the trial court or the appellate court or in his petition for leave to appeal. As noted, however, a constitutional challenge to a criminal statute can be raised at any time. *Bryant*, 128 Ill. 2d at 454. Accordingly, we find that waiver does not bar consideration of these issues.

J.W. concedes that this court has held that the Registration Act and the Notification Law are not punitive and therefore do not violate the eighth amendment. See *People v. Malchow*, 193 Ill. 2d 413 (2000). J.W. distinguishes *Malchow*, however, on the ground that the defendant in *Malchow* was an adult, and on the ground that the version of the Notification Law at issue in *Malchow* provided for limited dissemination of the information in question, while the current version of the Notification Law provides that anyone can access information on registered sex offenders at any time, including through the Internet.

We first address the claim that the Notification Law constitutes cruel and unusual punishment because it allows for unlimited dissemination of information concerning juvenile sex offenders. Both J.W. and the *amici* read the amendments to the Notification Law as providing for dissemination of information concerning juvenile sex offenders to anyone with access to the

Internet. J.W. and *amici* argue that providing such information over the Internet without restriction clearly is punitive when the sex offender is a 12-year-old boy.

As discussed above, however, J.W. and *amici* are reading the Notification Law incorrectly. The Notification Law specifically addresses juvenile sex offenders and provides that information concerning juvenile sex offenders is not available on the Internet and public access to information concerning juvenile sex offenders is limited to those whose safety might be compromised for some reason related to the juvenile sex offender. See 730 ILCS 152/120(e) (West 2000). In fact, the debates concerning House Bill 2721 reflect the limited dissemination of information concerning juvenile sex offenders. House Bill 2721 amended the Notification Law as well as the Registration Act to include juvenile sex offenders. In discussing the registration of juvenile sex offenders, Representative Klingler observed that "Notification, however, is limited to schools and when public safety is at risk then the juveniles would not be on the Internet." 91st Ill. Gen. Assem., House Proceedings, March 10, 1999, at 143 (statements of Representative Klingler).

Public information concerning juvenile sex offenders thus is much more restricted than information concerning adult sex offenders. Given that the dissemination of information concerning juvenile sex offenders is even narrower than the dissemination of information at issue in *Malchow*, we disagree with J.W. that *Malchow* is distinguishable and is not binding precedent.

With regard to the fact that the defendant in *Malchow* was an adult, J.W. analogizes the lifetime registration requirement in this case to the imposition of the death penalty and observes that the imposition of

the death penalty on a child under the age of 16 constitutes cruel and unusual punishment.

We find no merit to this argument. There is no question that the death penalty is a punishment. In *Malchow* and *Adams*, however, this court rejected claims that the Registration Act and the Notification Law constitute punishment. We are not persuaded that requiring a juvenile sex offender to register and allowing very limited public access to notification concerning the juvenile's status as a sex offender compels a different result. See *In re Ayres*, 239 Mich. App. 8, 608 N.W.2d 132 (1999) (given strict statutory safeguards protecting confidentiality of juvenile sex offenders, registration act as applied to juveniles neither punishes juvenile nor offends premise that a reformed adult should not have to carry stigma of youthful offense). We therefore reject J.W.'s claim that the Registration Act and Notification Law as applied to juvenile sex offenders constitutes cruel and unusual punishment.

As the State observes, J.W.'s argument that requiring him to register as a sex offender violates the proscription against double jeopardy is based on his claim that the registration requirement constitutes cruel and unusual punishment. Because we hold that the registration requirement does not constitute punishment, J.W.'s double jeopardy argument likewise must fail. See *Malchow*, 193 Ill. 2d at 426 (given holding that Registration Act and Notification Law are not punitive, defendant's claim that those statutes violate double jeopardy also must fail).

J.W.'s final argument is that the trial court's condition that he not reside in or enter South Elgin during the term of his probation is overly broad, unreasonable, and violates J.W.'s constitutional rights. J.W. claims that banishing a 12-year-old child from the entire town in

which he and his family resided is not reasonably related to the goals of rehabilitating the minor or protecting the public. J.W. concedes that the Juvenile Court Act allows the trial court to impose, as a condition of a minor's probation, the requirement that the minor refrain from entering a specific geographic area (see 705 ILCS 405/5-715(2)(r) (West 2000)), but argues that the condition here which provides for no circumstances under which J.W. can be present in South Elgin is too broad.

Section 5-715(2)(r) of the Juvenile Court Act provides:

> "(2) The court may as a condition of probation or of conditional discharge require that the minor:
>
> * * *
>
> (r) refrain from entering into a designated geographic area *except upon terms as the court finds appropriate.* The terms may include consideration of the purpose of the entry, the time of day, other persons accompanying the minor, and advance approval by a probation officer, if the minor has been placed on probation, or advance approval by the court, if the minor has been placed on conditional discharge." (Emphasis added.) 705 ILCS 405/5-715(2)(r) (West 2000).

Thus, the Juvenile Court Act allows a court to impose, as a condition of probation, certain restrictions on a minor's ability to be present within a designated geographical area if the court includes terms whereby the probationer can enter the restricted area for legitimate purposes. The order in the case at bar, however, goes further-it prohibits J.W. from residing in his own

home in the community where he had been living with his family. Moreover, the order banishes J.W. from the Village of South Elgin without providing any terms or exceptions to its application. Accordingly, J.W. is prohibited, as a condition of probation, from entering South Elgin for any purpose. Consequently, the condition of probation imposed on J.W. in the case at bar is not one which is explicitly provided for by statute.

Although the banishment condition of probation is not expressly provided for by statute, it may, nonetheless, be a constitutionally valid condition of probation. It has been recognized that courts have broad discretion to impose probation conditions, whether expressly allowed by statute or not, to achieve the goals of fostering rehabilitation and protecting the public. See *People v. Meyer*, 176 Ill. 2d 372, 378 (1997); *People v. Harris*, 238 Ill. App. 3d 575, 581 (1992). Of course, the wide latitude given to courts in setting conditions of probation is not boundless. *Harris*, 238 Ill. App. 3d at 580. The court's discretion is limited by constitutional safeguards and must be exercised in a reasonable manner. *Harris*, 238 Ill. App. 3d at 581. "The constitutional safeguards, which circumscribe a trial court's exercise of its discretion to impose conditions, are the basic constitutional rights of the probationer." *Harris*, 238 Ill. App. 3d at 581-82.

In *People v. Pickens*, 186 Ill. App. 3d 456, 460 (1989), it was recognized that probation conditions which impose geographic restrictions on travel implicate liberty interests. Reference was made in *Pickens* to *People v. Beach*, 147 Cal. App. 3d 612, 621-22, 195 Cal. Rptr. 381, 386-87 (1983), wherein the court held:

> " 'A probationer has the right to enjoy a significant degree of privacy, or liberty, under the Fourth, Fifth and Fourteenth Amend-

> ments to the federal constitution [citations].' [Citation.]
>
> A citizen has a basic constitutional right to intrastate as well as interstate travel. [Citation.] Many other fundamental rights such as free speech, free assembly and free association are often tied in with the right to travel. [Citation.] The right to acquire, own, enjoy and dispose of property is also a basic fundamental right guaranteed by the Fourteenth Amendment to the United States Constitution. [Citation.]"

Although the condition of probation imposed on J.W. in the case at bar-barring J.W. from residing in or going to South Elgin-implicates his constitutional rights, a condition of probation which impinges on fundamental constitutional rights is not automatically deemed invalid. Even fundamental constitutional rights are not absolute and may be reasonably restricted in the public interest. *City of Chicago v. Morales*, 177 Ill. 2d 440, 460 (1997) (personal liberties are not absolute and only governmental actions which intrude upon personal liberties arbitrarily or in an utterly unreasonable manner violate the due process clause); *Harris*, 238 Ill. App. 3d at 582; *Beach*, 147 Cal. App. 3d at 622, 195 Cal. Rptr. at 387. Thus, when deciding the propriety of a condition of probation imposed in a particular case, whether explicitly statutory or not, the overriding concern is reasonableness. *In re M.P.*, 297 Ill. App. 3d 972, 976 (1998); *People v. Ferrell*, 277 Ill. App. 3d 74, 79 (1995). To be reasonable, a condition of probation must not be overly broad when viewed in the light of the desired goal or the means to that end. *In re J.G.*, 295 Ill. App. 3d 840, 843 (1998). In other words, " '[w]here a condition of probation requires a waiver of precious constitutional rights, the condition must be narrowly

drawn; to the extent it is overbroad it is not reasonably related to the compelling state interest in reformation and rehabilitation and is an unconstitutional restriction on the exercise of fundamental constitutional rights.' " (Emphasis omitted.) *In re White*, 97 Cal. App. 3d 141, 146, 158 Cal. Rptr. 562, 565-66 (1979), quoting *People v. Mason*, 5 Cal. 3d 759, 768, 488 P.2d 630, 635, 97 Cal. Rptr. 302, 307 (1971).

When assessing the reasonableness of a condition of probation it is appropriate to consider whether the restriction is related to the nature of the offense or the rehabilitation of the probationer. *Meyer*, 176 Ill. 2d at 378; *Pickens*, 186 Ill. App. 3d at 460. Other considerations are: (1) whether the condition of probation reasonably relates to the rehabilitative purpose of the legislation, (2) whether the value to the public in imposing this condition of probation manifestly outweighs the impairment to the probationer's constitutional rights, and (3) whether there are any alternative means that are less subversive to the probationer's constitutional rights, but still comport with the purposes of conferring the benefit of probation. *Harris*, 238 Ill. App. 3d at 582; *In re J.G.*, 295 Ill. App. 3d at 843.

In the case at bar, the requirement that J.W. not reside in South Elgin is severe. At the time the condition was imposed, the family residence was located in South Elgin and the restriction prevented J.W. from living with his parents until they sold the home and moved to another community. In a California case, *People v. Beach*, a banishment order which required an elderly woman to vacate the home she had owned and lived in for 24 years was held invalid. *Beach*, 147 Cal. App. 3d at 622, 195 Cal. Rptr. at 387. The court found that the banishment served no valid purpose, stating:

> "[T]he value to the public does not manifestly outweigh any impairment of appellant's constitutional rights of freedom of travel, speech, association, assembly and to the possession and enjoyment of her property. Simply causing appellant to move from one geographical area to another is of minimal value to the public when compared with the infringement of appellant's basic constitutional rights." *Beach*, 147 Cal. App. 3d at 623, 195 Cal. Rptr. at 387.

The *Beach* court, when considering whether the banishment order would promote the probationer's rehabilitation, found that the condition might cause more damage due to the psychological stress that would be associated with such a move. *Beach*, 147 Cal. App. 3d at 622, 195 Cal. Rptr. at 387. Further, the *Beach* court held that there were less subversive means that the court could utilize to accomplish its goals.

The situation in *Beach* is distinguishable from the case at bar. Here, despite the harshness of the residency restriction, it is a reasonable condition of probation. Clearly, this condition is related to the offenses. The victims of the sexual assaults for which J.W. was adjudicated delinquent were children living in J.W.'s neighborhood. Further, due to the nature of the offenses and the hostile public sentiment they engendered, removing J.W. from the location where the offenses took place would be in his best interest and a benefit not only to his rehabilitation, but to the rehabilitation of his victims. In addition, the harshness of the residency restriction in the case at bar is tempered to a large degree by the fact that J.W.'s family expressed a willingness to move out of the community. From the record it appears that the court's order that J.W. not reside in South Elgin was not so much a restriction im-

posed by the court as it was an affirmation of the parent's expressed intent to leave the community. For all of these reasons, barring J.W. from residing in South Elgin is a constitutionally valid condition of probation and not unreasonable.

At the same time, however, banishing J.W. from entering South Elgin for *any* purpose is a condition of probation which is not narrowly drawn and, thus, an unconstitutionally overbroad restriction on J.W.'s exercise of his fundamental rights.

As noted earlier, a condition of probation is constitutionally valid if it is reasonable. However, a restriction on a probationer's travel into a specified geographic area is reasonable and not unconstitutionally overbroad only if (1) there is a valid purpose for the restriction, and (2) there is a means by which the probationer may obtain exemption from the restriction for legitimate purposes. In *People v. Pickens*, 186 Ill. App. 3d 456 (1989), our appellate court held:

> "A court may, as a condition of probation or other sentence short of incarceration, bar a defendant from certain areas if the penalty is reasonably related to the offense, *provided* that, if the defendant has a legitimate and compelling reason to go to that area or place, he may apply to a specified authority for specific permission, as here to the probation officer.
>
> We find the proviso to the condition imposed, permitting the defendant to obtain specific written permission from her probation officer to enter the restricted area if she had a legitimate reason to go there, removes the taint of banishment from the restriction and substitutes in its stead

supervised guidance for permissive entry to the area." (Emphasis in original.) *Pickens*, 186 Ill. App. 3d at 461-62.

In the present case, banishing J.W. from going to South Elgin was a condition imposed in an attempt to minimize the possibility of J.W.'s contact with his victims. While this serves as a valid purpose for the restriction, the limitation imposed in the case at bar is too broad because it fails to make any provision for J.W. to enter the area for legitimate purposes.

Section 5-715(2)(r) of the Juvenile Court Act authorizes the court, as a condition of probation, to require a juvenile to "refrain from entering into a designated geographic area *except upon terms as the court finds appropriate.*" (Emphasis added.) This language of the statute mirrors the constitutional requirement that the condition of probation be narrowly drawn. For this reason, the trial court, by failing to strictly conform the condition of probation to the requirements of the statute, imposed an overly broad and unconstitutional condition of probation. We therefore vacate the portion of the trial court's order of probation imposing the banishment condition as written, and remand the cause so that the court may consider whether the geographic travel restriction is still warranted and, if so, what appropriate terms for entering the geographic area should be applied.

CONCLUSION

For the reasons stated, the judgment of the appellate court, affirming the judgment of the circuit court of Kane County, is affirmed in part, vacated in part and remanded for further proceedings consistent with this opinion.

Affirmed in part and
vacated in part;
cause remanded.

JUSTICE RARICK took no part in the consideration or decision of this case.

CHIEF JUSTICE McMORROW, specially concurring:

In the case at bar, this court upholds the constitutionality of the Sex Offender Registration Act (Registration Act) (730 ILCS 150/1 *et seq.* (West 2000)), which requires 12-year-old J.W., who was adjudicated delinquent on two counts of aggravated criminal sexual assault, to register as a sex offender for the rest of his life. Although I believe this ruling to be legally correct, I write separately to express my concern over the harshness of this lifetime reporting requirement.

J.W. contends that imposing a lifetime registration requirement on juveniles, especially juveniles under the age of 13, violates substantive due process and the proscription against double jeopardy, and constitutes cruel and unusual punishment in violation of the eighth amendment to the United States Constitution.

While I agree with the court that the registration requirements mandated by the plain language of the Registration Act are constitutionally valid, I recognize a certain tension between a lifetime reporting requirement and the philosophical underpinnings of our juvenile justice system.

According to the provisions of our Juvenile Court Act, a minor under the age of 13 can never be prosecuted under the criminal laws of this State, nor

can a minor under the age of 13 be the subject of an extended juvenile prosecution. 705 ILCS 405/5-130, 5-805, 5-810 (West 2000). In my view, these provisions reflect a legislative understanding that children under the age of 13, no matter how serious the offense charged, "simply are too immature as a matter of law to be tried as an adult." *In re Registrant J.G.*, 169 N.J. 304, 325, 777 A.2d 891, 904 (2001). Children under the age of 13 have a diminished capacity to form criminal intent. It seems incongruous, then, to make no distinction in the treatment of juveniles under the age of 13 for purposes of the Registration Act.

I observe that, while all 50 states have adopted sex offender registration and community notification laws, often referred to as Megan's Laws (see *State v. Misiorski*, 250 Conn. 280, 292, 738 A.2d 595, 601-02 (1999) (providing historical explanation of Megan's Laws and their adoption throughout the country)), the implementation of these laws, particularly with respect to juveniles, varies greatly from state to state. Some states do not expressly include juveniles in their law (see, *e.g.*, Fla. Stat. Ann. §775.21 (West 2000)), while others include only those juveniles who have been tried and convicted as adults (see, *e.g.*, Del. Code Ann. tit. 11, §4121(a)(4)(b) (Supp. 2000)). In some instances, although registration requirements are made applicable to juveniles, the burden has been ameliorated by various means: by making a jury trial a condition precedent to juvenile registration, allowing the juvenile court the discretion to waive the registration requirement, providing that the duty to register will terminate at a certain age or by allowing the juvenile to petition for termination of the registration duty upon a clear showing that the juvenile has not reoffended and that registration is no longer necessary to protect the public.

I recognize that the laws in other jurisdictions which limit registration and notification requirements with respect to juveniles are the result of policy determinations made by the governing bodies of those states. I further recognize that the authority to determine appropriate public policy for this state is vested in our legislature and not with this court. Thus, barring a constitutional violation, this court is constrained to uphold the registration and notification laws of this state as written.

In the case at bar, this court holds that the requirements of the Registration Act apply equally to adults and juveniles and that our constitutional safeguards do not prevent the Registration Act's lifetime registration provisions from being applied to minors of all ages. While I am compelled to agree with this determination, I, nevertheless, invite the legislature to reconsider the wisdom of imposing such a burden on juveniles, particularly juveniles under the age of 13. The public safety concerns which animate the registration and notification laws should be harmonized with our traditional understanding of the need to protect and rehabilitate the young citizens of this state.

JUSTICE FREEMAN joins in this special concurrence.

JUSTICE KILBRIDE, concurring in part and dissenting in part:

I concur in the majority's holding that the condition of probation barring J.W. from going to South Elgin fails to conform strictly to the requirements of the statute and is an overly broad and unconstitutional condition of probation. Although I agree with the majority that adjudicated juvenile delinquent sex offenders

are required to register as sex offenders, I respectfully dissent in part because I disagree with the majority's interpretation of the Illinois Sex Offender Registration Act (Registration Act) (730 ILCS 150/1 *et seq.* (West 2000)) as requiring J.W. to register as a sexual predator for the rest of his life. Moreover, I believe that an interpretation requiring a 12-year-old child to register as a sexual predator for the rest of his natural life offends principles of substantive due process. Finally, I dissent because of the majority's unnecessary factual description of the sexual conduct between J.W. and the minor victims.

The primary purpose of statutory construction is to determine and give effect to the legislature's intent, while presuming the legislature did not intend to create absurd, inconvenient, or unjust results. *In re D.D.*, 196 Ill. 2d 405, 418-19 (2001). The best indication of legislative intent is the language of the statute. *In re D.L.*, 191 Ill. 2d 1, 9 (2000). If the language of the statute is clear and unambiguous, there is no need to resort to other aids of construction. *D.L.*, 191 Ill. 2d at 9. A statute is ambiguous if it is capable of more than one reasonable interpretation. *In re B.C.*, 176 Ill. 2d 536, 543 (1997). In ascertaining legislative intent, it is proper to compare statutes that concern the same subject matter and to consider statutes on related subjects. See *Anderson v. City of Park Ridge*, 396 Ill. 235, 244 (1947).

The parties disagree on the interpretation of the Registration Act as applied to juvenile sex offenders and acknowledge that the Registration Act is subject to differing reasonable interpretations. A statute is ambiguous when it is capable of being understood by reasonably well-informed persons in two or more different senses. *People v. Jameson*, 162 Ill. 2d 282, 288 (1994). Here, the Registration Act is clearly subject to more than one reasonable interpretation and is thus ambigu-

ous. See *B.C.*, 176 Ill. 2d at 543 (a statute is ambiguous if it is capable of more than one reasonable interpretation). Accordingly, we must employ aids of statutory construction to determine legislative intent, while avoiding absurd, inconvenient, or unjust results. See *D.D.*, 196 Ill. 2d at 418-19.

The legislature created two categories of sex offenders. Section 2(A) of the Registration Act defines a "sex offender" and section 2(E) defines a "sexual predator." Section 2(A-5) defines "juvenile sex offender." An adjudicated juvenile delinquent sex offender is a specific type of sex offender. In fact, the recent amendments to the Registration Act deleting the "juvenile sex offender" definition section 2(A-5) and adding a subsection (5) to section 2(A) supports the inference that the legislature intended adjudicated juvenile delinquent sex offenders to be a specific category of sex offender. See Pub. Act 92-828, eff. August 22, 2002 (amending 730 ILCS 150/2, 3, 4, 5, 5-5, 6, 7, 8-5, 10 (West 2000)).

Nonetheless, I agree with the majority that J.W. falls within the definition of a "sex offender" because he was adjudicated a juvenile delinquent as a result of committing aggravated criminal sexual assault, an offense specified in section 2(B) of the Registration Act. I disagree, however, with the majority that a juvenile sex offender can be classified as a "sexual predator."

A reading of section 2(A-5) of the Registration Act and section 105 of the Sex Offender and Child Murder Community Notification Law (Notification Law), together with section 2(E) of the Registration Act, makes it clear that a "juvenile sex offender" cannot be classified as a sexual predator. Both sections 2(A-5) of the Registration Act and 105 of the Notification Law specifically define a "juvenile sex offender" as one who commits any of the offenses specified in items "(B), (C),

or (C-5)" of the Registration Act, and neither definition makes any reference to item (E) of the Registration Act that would result in the classification as a "juvenile sexual predator."

Section 2(E), on the other hand, specifically defines a "sexual predator" as one who is convicted of any of the offenses specified in items (1), (2), or (5) of section 2(E), or certified as a sexually dangerous person, or found to be a sexually violent person. 730 ILCS 150/2(E)(1), (E)(2), (E)(3), (E)(4), (E)(5) (West 2000). Section 2(E) contains no reference to section 2(A-5) or any indication that a "juvenile sex offender" may also be classified as a "sexual predator." In fact, there are absolutely no references to juveniles as "sexual predators" in either the Registration Act or the Notification Law.

Moreover, although the term "convicted" is given the same meaning as "adjudicated" for purposes of section 2(A), section 2(E) contains no similar pronouncement. Based upon section 2(E)'s silence on adjudications, the legislature must have intended that the term "sexual predator" apply only to persons who have actually been "convicted" in adult court of a specified offense.

Any other interpretation leads to unjust and absurd results. For instance, the majority's interpretation would subject so called "juvenile sexual predators" of any age to such reporting requirements, while a sex offender or a sexual predator who is convicted of first degree murder of a child must be at least 17 years of age to be subject to lifetime reporting requirements. See 730 ILCS 150/2(C-5), (E)(2) (West 2000). The legislature surely did not intend consequences so inconsistent with reason, logic, and common sense.

Equally important, the State never has contended that and, indeed, it concedes in its brief that

J.W. should not be required to register as a "sexual predator" and that his registration is limited to a period of 10 years. The State itself expresses concerns over the propriety of requiring a 12-year-old child to register as a sex offender for the rest of his life, remarking that,

"As a sex offender, the registration of the minor is limited to 10 years. A 10-year requirement *** strikes a fair balance between Respondent's desire for a limited registration time and the People's concerns for protecting the public."

The State further acknowledges in its brief that the trial court ordered J.W. to register as a "sex offender," not as a "sexual predator." The State also acknowledges that the appellate court mistakenly determined, *sua sponte*, that J.W. must register as a "sexual predator."

J.W. was not convicted as an adult in a criminal court and cannot be treated as an adult in every aspect of sex offender registration and community notification. Juveniles convicted as *adults* are classified as either "sex offenders" or "sexual predators" based upon their specific convictions. Such convictions are founded on determinations of guilt beyond a reasonable doubt, subject to the protections of the fourth, fifth, and sixth amendments to our federal constitution. However, under the majority's statutory interpretation, a juvenile who was not treated as an adult in criminal court but was adjudicated a juvenile delinquent sex offender in juvenile court cannot have the advantage of such protections. While some registration requirements such as the 10-year limitation may be justified, a juvenile delinquent sex offender can only be classified as a "sex offender" and cannot be classified as a "sexual predator."

This statutory interpretation is consistent with current practice and the official guides that are widely

disseminated by the Illinois State Police. See *A Guide to Sex Offender Registration in Illinois*, Prepared for: Illinois Criminal Justice Agencies, at 6, 31, 33 (October 1, 2002) ("Adjudicated juvenile delinquent sex offenders are required to register effective July 1, 1999. *Adjudicated juvenile delinquent sex offenders are not predators*" (emphasis added) and "[a]djudicated juvenile delinquent sex offenders *cannot* be classified as sexual predators (emphasis in original)"); see also *A Guide to Sex Offender and Child Murder Community Notification Law in Illinois*, Prepared for: Illinois Criminal Justice Agencies (October 1, 2002).

This interpretation of the statute is also consistent with the fact that juveniles who engage in sexually inappropriate behavior do not necessarily pose a long-term risk of reoffending. "In many instances, sexually improper behavior by such young children [under age 14] is more a reflection of inadequate adult supervision, immaturity, inappropriate media exposure, or a prior history of emotional abuse than it is of irremediable sexually predatory inclinations." *In re Registrant J.G.*, 169 N.J. 304, 340, 777 A.2d 891, 913-14 (2001). Accordingly, I believe that while the trial court properly ordered J.W. to register as a juvenile sex offender, this registration requirement is limited to 10 years from the date of adjudication.

I agree with the majority that information concerning J.W. cannot be disseminated to the public, placed on the Internet, or made available to the public except when public safety is threatened. The majority does not make clear, however, that for purposes of community notification, the adjudicated juvenile delinquent sex offender should continue to be treated as a juvenile, even though he or she reaches the age of 18.

I further disagree with the majority's analysis that subjecting a 12-year-old child to lifetime registration requirements as a "sexual predator" comports with principles of substantive due process. To comply with substantive due process, a statute must bear a reasonable relationship to a public interest to be served, and the means adopted must be a reasonable method of accomplishing the desired objective. *People v. Adams*, 144 Ill. 2d 381, 390 (1991).

In *Adams*, this court found that the State has an interest in protecting the public from sexual offenders and that the Registration Act bears a reasonable relationship to that interest. *Adams*, 144 Ill. 2d at 391. However, in *Adams*, this court only reviewed the registration requirements in the adult context. The majority fails to acknowledge that adjudicated juvenile delinquent sex offenders do not enjoy the same panoply of rights and safeguards as adults and juveniles prosecuted as adults in criminal court. Requiring a 12-year-old child to register as a sexual predator for the rest of his life is an unreasonable means of furthering the State's interest. The majority misses this obvious conclusion and, unfortunately, ignores the State's concession of that point.

Although this court has recognized that recent amendments to the Juvenile Court Act have resulted in juvenile proceedings that are "similar" to adult criminal proceedings (*In re A.G.*, 195 Ill. 2d 313, 317-19 (2001)), there remain fundamental differences between the juvenile and criminal justice systems that militate against holding a 12-year-old child to an adult standard of registration and reporting for the rest of his life. Children have lesser levels of maturity and, because of their corresponding inability to control their behavior or to comprehend fully the consequences of their actions, their criminal acts are generally considered less culpable than those of an adult, and they are seen as more

amenable to treatment and rehabilitation. *Thompson v. Oklahoma*, 487 U.S. 815, 835, 101 L. Ed. 2d 702, 718-19, 108 S. Ct. 2687, 2698-99 (1988) (plurality op.). In fact, the Juvenile Court Act of 1987 distinguishes between juveniles over and under the age of 13. Under the provisions of the Juvenile Court Act, a juvenile court judge may enter an order permitting a minor 13 years of age or older to be prosecuted under the criminal laws of the state if the judge finds "that it is not in the best interests of the public to proceed under this Act." 705 ILCS 405/5-805(3)(a) (West 2000). There is no similar provision for the transfer of minors under the age of 13. "It is clear that the purpose of a transfer proceeding is to balance the best interests of a juvenile offender, particularly as the offender's interests relate to his potential for rehabilitation, against society's legitimate interest in being protected from criminal victimization perpetrated by minors." *People v. Morgan*, 197 Ill. 2d 404, 424-25 (2001). The transfer provisions of the Juvenile Court Act reflect a clear legislative determination that a child under the age of 13 is simply too immature as a matter of law to be tried as an adult, no matter how serious the offense.

It is indisputable that J.W. could not have been prosecuted as an adult for his conduct. To treat him as an adult by requiring him to comply with lifetime registration requirements cannot seriously be considered a "reasonable" means of furthering the state's interest. I can conceive of no legitimate rationale for subjecting a juvenile delinquent under the age of 13 to lifetime registration requirements. Accordingly, I believe that subjecting juvenile delinquents to a lifetime registration requirement violates principles of substantive due process as it is an unreasonable method of accomplishing the state's desired objective, and is therefore unconstitutional as applied to juvenile delinquents. See

Adams, 144 Ill. 2d at 390 (to comply with substantive due process, a statute must bear a reasonable relationship to a public interest to be served, and the means adopted must be a reasonable method of accomplishing the desired objective).

This court now puts juveniles, regardless of age, on equal footing with their adult counterparts without affording them equal constitutional rights and protections. After today's decision, children under the age of 12 who are adjudicated of certain sex offenses will be forever labeled as "sexual predators" and subjected to lifetime registration requirements.

Finally, I am troubled by the majority's detailed description of the sexual conduct between J.W. and his victims, including identifying the minor victims by initials. This court should be especially sensitive to protecting the identity of the juveniles and respecting the privacy of the juvenile victims. It is apparent from the record that many people in the community of South Elgin already know the identity of J.W. and his involvement in sexual conduct with other juveniles, but these people may not have known the identity of the victims or the exact nature of the sexual conduct. Given that J.W. pled guilty, such specific and graphic details are unnecessary to the disposition of this case and are, in my opinion, inappropriate.

For the foregoing reasons, I respectfully dissent.

APPENDIX E:
Supreme Court of Illinois Rehearing Docket

SUPREME COURT OF ILLINOIS

Springfield, Illinois, March 31, 2003

THE FOLLOWING CASES ON THE REHEARING DOCKET WERE DISPOSED OF AS INDICATED:

No. 92116 - In re J. W., a Minor (People State of Illinois, appellee, v. J. W., appellant). Appeal, Appellate Court, Second District.

Petition for rehearing denied.

Rarick, J., took no part.

[Disposition of other cases omitted]

APPENDIX F:
Stay Order of Supreme Court of Illinois

No. 92116

IN THE

SUPREME COURT OF ILLINOIS

In re J.W., a Minor	)	Appeal from the
	)	Appellate Court,
	)	Second District,
People State of Illinois,	)	2-00-0360 &
	)	2-00-0432, cons.
Appellee	)	
	)	Original appeal from
v.	)	the Circuit Court,
	)	Kane County,
	)	99 JD K 950
J.W.,	)	
Appellant	)	Hon Barry Puklin,
	)	Judge Presiding.

ORDER

This matter has come for consideration upon the motion of appellant to stay the mandate of this Court pending appeal or application for certiorari in the United States Supreme Court.

IT IS ORDERED that the mandate of this Court in the above cause is stayed pending the filing of a notice of appeal or an application for certiorari or the expiration of the period within which said application or notice may be filed. If certiorari is applied for or notice of appeal filed, the mandate of this Court shall, upon proof of such filing being made by affidavit filed with the clerk of this Court, be further stayed pending reso-

lution by the United States Supreme Court of such application or appeal. If no such affidavit is filed, the mandate shall, without further order, issue upon the expiration of the time within which appeal or certiorari may be sought.

/s/ Robert R. Thomas

[FILED APR 9 -2003 SUPREME COURT CLERK]

APPENDIX G:
U.S. CONSTITUTION AMENDMENT V

U.S. CONSTITUTION AMENDMENT V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX H:
U.S. CONSTITUTION AMENDMENT VIII

U.S. CONSTITUTION AMENDMENT VIII:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

APPENDIX I:
U.S. CONSTITUTION AMENDMENT XIV

U.S. CONSTITUTION AMENDMENT XIV:

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX J:
Registration Act,
730 ILL. COMP. STAT. 150/1 et seq. (West 2003)

730 ILCS 150/1. Short title

§ 1. Short title. This Article may be cited as the Sex Offender Registration Act.

730 ILCS 150/2. Definitions

§ 2. Definitions.

(A) As used in this Article, "sex offender" means any person who is:

(1) charged pursuant to Illinois law, or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law, with a sex offense set forth in subsection (B) of this Section or the attempt to commit an included sex offense, and:

(a) is convicted of such offense or an attempt to commit such offense; or

(b) is found not guilty by reason of insanity of such offense or an attempt to commit such offense; or

(c) is found not guilty by reason of insanity pursuant to Section 104-25(c) of the Code of Criminal Procedure of 1963 of such offense or an attempt to commit such offense; or

(d) is the subject of a finding not resulting in an acquittal at a hearing conducted pursuant to Section 104-25(a) of the Code of Criminal Procedure of 1963 for the alleged commission or attempted commission of such offense; or

(e) is found not guilty by reason of insanity following a hearing conducted pursuant to a federal, Uniform Code of Military Justice, sister state, or foreign country law substantially similar to Section 104-25(c) of the Code of Criminal Procedure of 1963 of such offense or of the attempted commission of such offense; or

(f) is the subject of a finding not resulting in an acquittal at a hearing conducted pursuant to a federal, Uniform Code of Military Justice, sister state, or foreign country law substantially similar to Section 104-25(a) of the Code of Criminal Procedure of 1963 for the alleged violation or attempted commission of such offense; or

(2) certified as a sexually dangerous person pursuant to the Illinois Sexually Dangerous Persons Act, or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law; or

(3) subject to the provisions of Section 2 of the Interstate Agreements on Sexually Dangerous Persons Act; or

(4) found to be a sexually violent person pursuant to the Sexually Violent Persons Commitment Act or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law; or

(5) adjudicated a juvenile delinquent as the result of committing or attempting to commit an act which, if committed by an adult, would constitute any of the offenses specified in item (B), (C), or (C-5) of this Section or a violation of any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law, or found guilty under Article V of the Juvenile Court Act of 1987 of committing or attempting to commit an act which, if committed by an adult, would constitute any of the offenses specified in item (B), (C), or (C-5) of this Section or a violation of any substantially similar federal, Uniform Code of Military Justice,

sister state, or foreign country law.

Convictions that result from or are connected with the same act, or result from offenses committed at the same time, shall be counted for the purpose of this Article as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this Article.

For purposes of this Section, "convicted" shall have the same meaning as "adjudicated".

(B) As used in this Article, "sex offense" means:

(1) A violation of any of the following Sections of the Criminal Code of 1961:

11-20.1 (child pornography),

11-6 (indecent solicitation of a child),

11-9.1 (sexual exploitation of a child),

11-15.1 (soliciting for a juvenile prostitute),

11-18.1 (patronizing a juvenile prostitute),

11-17.1 (keeping a place of juvenile prostitution),

11-19.1 (juvenile pimping),

11-19.2 (exploitation of a child),

12-13 (criminal sexual assault),

12-14 (aggravated criminal sexual assault),

12-14.1 (predatory criminal sexual assault of a child),

12-15 (criminal sexual abuse),

12-16 (aggravated criminal sexual abuse),

12-33 (ritualized abuse of a child).

An attempt to commit any of these offenses.

(1.5) A violation of any of the following Sections of the Criminal Code of 1961, when the victim is a person un-

der 18 years of age, the defendant is not a parent of the victim, and the offense was committed on or after January 1, 1996:

10-1 (kidnapping),

10-2 (aggravated kidnapping),

10-3 (unlawful restraint),

10-3.1 (aggravated unlawful restraint).

An attempt to commit any of these offenses.

(1.6) First degree murder under Section 9-1 of the Criminal Code of 1961, when the victim was a person under 18 years of age, the defendant was at least 17 years of age at the time of the commission of the offense, and the offense was committed on or after June 1, 1996.

(1.7) (Blank).

(1.8) A violation or attempted violation of Section 11-11 (sexual relations within families) of the Criminal Code of 1961, and the offense was committed on or after June 1, 1997.

(1.9) Child abduction under paragraph (10) of subsection (b) of Section 10-5 of the Criminal Code of 1961 committed by luring or attempting to lure a child under the age of 16 into a motor vehicle, building, house trailer, or dwelling place without the consent of the parent or lawful custodian of the child for other than a lawful purpose and the offense was committed on or after January 1, 1998.

(1.10) A violation or attempted violation of any of the following Sections of the Criminal Code of 1961 when the offense was committed on or after July 1, 1999:

10-4 (forcible detention, if the victim is under 18 years of age),

11-6.5 (indecent solicitation of an adult),

11-15 (soliciting for a prostitute, if the victim is under 18 years of age),

11-16 (pandering, if the victim is under 18 years of age),

11-18 (patronizing a prostitute, if the victim is under 18 years of age),

11-19 (pimping, if the victim is under 18 years of age).

(1.11) A violation or attempted violation of any of the following Sections of the Criminal Code of 1961 when the offense was committed on or after the effective date of this amendatory Act of the 92nd General Assembly:

11-9 (public indecency for a third or subsequent conviction),

11-9.2 (custodial sexual misconduct).

(1.12) A violation or attempted violation of Section 5.1 of the Wrongs to Children Act (permitting sexual abuse) when the offense was committed on or after the effective date of this amendatory Act of the 92nd General Assembly.

(2) A violation of any former law of this State substantially equivalent to any offense listed in subsection (B) of this Section.

(C) A conviction for an offense of federal law, Uniform Code of Military Justice, or the law of another state or a foreign country that is substantially equivalent to any offense listed in subsections (B), (C), and (E) of this Section shall constitute a conviction for the purpose of this Article. A finding or adjudication as a sexually dangerous person or a sexually violent person under any

federal law, Uniform Code of Military Justice, or the law of another state or foreign country that is substantially equivalent to the Sexually Dangerous Persons Act or the Sexually Violent Persons Commitment Act shall constitute an adjudication for the purposes of this Article.

(C-5) A person at least 17 years of age at the time of the commission of the offense who is convicted of first degree murder under Section 9-1 of the Criminal Code of 1961, committed on or after June 1, 1996 against a person under 18 years of age, shall be required to register for natural life. A conviction for an offense of federal, Uniform Code of Military Justice, sister state, or foreign country law that is substantially equivalent to any offense listed in subsection (C-5) of this Section shall constitute a conviction for the purpose of this Article.

(D) As used in this Article, "law enforcement agency having jurisdiction" means the Chief of Police in each of the municipalities in which the sex offender expects to reside, work, or attend school (1) upon his or her discharge, parole or release or (2) during the service of his or her sentence of probation or conditional discharge, or the Sheriff of the county, in the event no Police Chief exists or if the offender intends to reside, work, or attend school in an unincorporated area. "Law enforcement agency having jurisdiction" includes the location where out-of-state students attend school and where out-of-state employees are employed or are otherwise required to register.

(E) As used in this Article, "sexual predator" means any person who, after July 1, 1999, is:

(1) Convicted for an offense of federal, Uniform Code of Military Justice, sister state, or foreign country law that is substantially equivalent to any offense listed in subsection (E) of this Section shall constitute a convic-

tion for the purpose of this Article. Convicted of a violation or attempted violation of any of the following Sections of the Criminal Code of 1961, if the conviction occurred after July 1, 1999:

11-17.1 (keeping a place of juvenile prostitution),

11-19.1 (juvenile pimping),

11-19.2 (exploitation of a child),

11-20.1 (child pornography),

12-13 (criminal sexual assault, if the victim is a person under 12 years of age),

12-14 (aggravated criminal sexual assault),

12-14.1 (predatory criminal sexual assault of a child),

12-16 (aggravated criminal sexual abuse),

12-33 (ritualized abuse of a child); or

(2) convicted of first degree murder under Section 9-1 of the Criminal Code of 1961, when the victim was a person under 18 years of age and the defendant was at least 17 years of age at the time of the commission of the offense; or

(3) certified as a sexually dangerous person pursuant to the Sexually Dangerous Persons Act or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law; or

(4) found to be a sexually violent person pursuant to the Sexually Violent Persons Commitment Act or any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law; or

(5) convicted of a second or subsequent offense which requires registration pursuant to this Act. The conviction for the second or subsequent offense must have

occurred after July 1, 1999. For purposes of this paragraph (5), "convicted" shall include a conviction under any substantially similar Illinois, federal, Uniform Code of Military Justice, sister state, or foreign country law.

(F) As used in this Article, "out-of-state student" means any sex offender, as defined in this Section, or sexual predator who is enrolled in Illinois, on a full-time or part-time basis, in any public or private educational institution, including, but not limited to, any secondary school, trade or professional institution, or institution of higher learning.

(G) As used in this Article, "out-of-state employee" means any sex offender, as defined in this Section, or sexual predator who works in Illinois, regardless of whether the individual receives payment for services performed, for a period of time of 10 or more days or for an aggregate period of time of 30 or more days during any calendar year. Persons who operate motor vehicles in the State accrue one day of employment time for any portion of a day spent in Illinois.

[Footnotes Omitted]

730 ILCS 150/3. Duty to register

§ 3. Duty to register.

(a) A sex offender, as defined in Section 2 of this Act, or sexual predator shall, within the time period prescribed in subsections (b) and (c), register in person and provide accurate information as required by the Department of State Police. Such information shall include current address, current place of employment, and school attended. The sex offender or sexual predator shall register:

(1) with the chief of police in each of the municipalities

in which he or she attends school, is employed, resides or is temporarily domiciled for a period of time of 10 or more days, unless the municipality is the City of Chicago, in which case he or she shall register at the Chicago Police Department Headquarters; or

(2) with the sheriff in each of the counties in which he or she attends school, is employed, resides or is temporarily domiciled in an unincorporated area or, if incorporated, no police chief exists.

For purposes of this Article, the place of residence or temporary domicile is defined as any and all places where the sex offender resides for an aggregate period of time of 10 or more days during any calendar year.

The sex offender or sexual predator shall provide accurate information as required by the Department of State Police. That information shall include the sex offender's or sexual predator's current place of employment.

(a-5) An out-of-state student or out-of-state employee shall, within 10 days after beginning school or employment in this State, register in person and provide accurate information as required by the Department of State Police. Such information will include current place of employment, school attended, and address in state of residence:

(1) with the chief of police in each of the municipalities in which he or she attends school or is employed for a period of time of 10 or more days or for an aggregate period of time of more than 30 days during any calendar year, unless the municipality is the City of Chicago, in which case he or she shall register at the Chicago Police Department Headquarters; or

(2) with the sheriff in each of the counties in which he or she attends school or is employed for a period of

time of 10 or more days or for an aggregate period of time of more than 30 days during any calendar year in an unincorporated area or, if incorporated, no police chief exists.

The out-of-state student or out-of-state employee shall provide accurate information as required by the Department of State Police. That information shall include the out-of-state student's current place of school attendance or the out-of-state employee's current place of employment.

(b) Any sex offender, as defined in Section 2 of this Act, or sexual predator, regardless of any initial, prior, or other registration, shall, within 10 days of beginning school, or establishing a residence, place of employment, or temporary domicile in any county, register in person as set forth in subsection (a) or (a-5).

(c) The registration for any person required to register under this Article shall be as follows:

(1) Any person registered under the Habitual Child Sex Offender Registration Act or the Child Sex Offender Registration Act prior to January 1, 1996, shall be deemed initially registered as of January 1, 1996; however, this shall not be construed to extend the duration of registration set forth in Section 7.

(2) Except as provided in subsection (c)(4), any person convicted or adjudicated prior to January 1, 1996, whose liability for registration under Section 7 has not expired, shall register in person prior to January 31, 1996.

(2.5) Except as provided in subsection (c)(4), any person who has not been notified of his or her responsibility to register shall be notified by a criminal justice entity of his or her responsibility to register. Upon notification the person must then register within 10 days of notifi-

cation of his or her requirement to register. If notification is not made within the offender's 10 year registration requirement, and the Department of State Police determines no evidence exists or indicates the offender attempted to avoid registration, the offender will no longer be required to register under this Act.

(3) Except as provided in subsection (c)(4), any person convicted on or after January 1, 1996, shall register in person within 10 days after the entry of the sentencing order based upon his or her conviction.

(4) Any person unable to comply with the registration requirements of this Article because he or she is confined, institutionalized, or imprisoned in Illinois on or after January 1, 1996, shall register in person within 10 days of discharge, parole or release.

(5) The person shall provide positive identification and documentation that substantiates proof of residence at the registering address.

(6) The person shall pay a $10 initial registration fee and a $5 annual renewal fee. The fees shall be used by the registering agency for official purposes. The agency shall establish procedures to document receipt and use of the funds. The law enforcement agency having jurisdiction may waive the registration fee if it determines that the person is indigent and unable to pay the registration fee.

(d) Within 10 days after obtaining or changing employment and, if employed on January 1, 2000, within 10 days after that date, a person required to register under this Section must report, in person or in writing to the law enforcement agency having jurisdiction, the business name and address where he or she is employed. If the person has multiple businesses or work locations, every business and work location must be

reported to the law enforcement agency having jurisdiction.

[Footnotes Omitted]

730 ILCS 150/4. Discharge of sex offender, as defined in Section 2 of this Act, or sexual predator from Department of Corrections facility or other penal institution; duties of official in charge

§ 4. Discharge of sex offender, as defined in Section 2 of this Act, or sexual predator from Department of Corrections facility or other penal institution; duties of official in charge. Any sex offender, as defined in Section 2 of this Act, or sexual predator, as defined by this Article, who is discharged, paroled or released from a Department of Corrections facility, a facility where such person was placed by the Department of Corrections or another penal institution, and whose liability for registration has not terminated under Section 7 shall, prior to discharge, parole or release from the facility or institution, be informed of his or her duty to register in person within 10 days under this Article by the facility or institution in which he or she was confined. The facility or institution shall also inform any person who must register that if he or she establishes a residence outside of the State of Illinois, is employed outside of the State of Illinois, or attends school outside of the State of Illinois, he or she must register in the new state within 10 days after establishing the residence, beginning employment, or beginning school.

The facility shall require the person to read and sign such form as may be required by the Department of State Police stating that the duty to register and the procedure for registration has been explained to him or her and that he or she understands the duty to register

and the procedure for registration. The facility shall further advise the person in writing that the failure to register or other violation of this Article shall result in revocation of parole, mandatory supervised release or conditional release. The facility shall obtain information about where the person expects to reside, work, and attend school upon his or her discharge, parole or release and shall report the information to the Department of State Police. The facility shall give one copy of the form to the person and shall send one copy to each of the law enforcement agencies having jurisdiction where the person expects to reside, work, and attend school upon his or her discharge, parole or release and retain one copy for the files. Electronic data files which includes all notification form information and photographs of sex offenders being released from an Illinois Department of Corrections facility will be shared on a regular basis as determined between the Department of State Police and the Department of Corrections.

730 ILCS 150/5. Release of sex offender, as defined in Section 2 of this Act, or sexual predator; duties of the Court

§ 5. Release of sex offender, as defined in Section 2 of this Act, or sexual predator; duties of the Court. Any sex offender, as defined in Section 2 of this Act, or sexual predator, as defined by this Article, who is released on probation or discharged upon payment of a fine because of the commission of one of the offenses defined in subsection (B) of Section 2 of this Article, shall, prior to such release be informed of his or her duty to register under this Article by the Court in which he or she was convicted. The Court shall also inform any person who must register that if he or she establishes a residence outside of the State of Illinois, is employed out-

side of the State of Illinois, or attends school outside of the State of Illinois, he or she must register in the new state within 10 days after establishing the residence, beginning employment, or beginning school. The Court shall require the person to read and sign such form as may be required by the Department of State Police stating that the duty to register and the procedure for registration has been explained to him or her and that he or she understands the duty to register and the procedure for registration. The Court shall further advise the person in writing that the failure to register or other violation of this Article shall result in probation revocation. The Court shall obtain information about where the person expects to reside, work, and attend school upon his or her release, and shall report the information to the Department of State Police. The Court shall give one copy of the form to the person and retain the original in the court records. The Department of State Police shall notify the law enforcement agencies having jurisdiction where the person expects to reside, work and attend school upon his or her release.

730 ILCS 150/5-5. Discharge of sex offender or sexual predator from a hospital or other treatment facility; duties of the official in charge

§ 5-5. Discharge of sex offender or sexual predator from a hospital or other treatment facility; duties of the official in charge. Any sex offender, as defined in Section 2 of this Act, or sexual predator, as defined in this Article, who is discharged or released from a hospital or other treatment facility where he or she was confined shall be informed by the hospital or treatment facility in which he or she was confined, prior to discharge or release from the hospital or treatment facility, of his or her

duty to register under this Article.

The facility shall require the person to read and sign such form as may be required by the Department of State Police stating that the duty to register and the procedure for registration has been explained to him or her and that he or she understands the duty to register and the procedure for registration. The facility shall give one copy of the form to the person, retain one copy for their records, and forward the original to the Department of State Police. The facility shall obtain information about where the person expects to reside, work, and attend school upon his or her discharge, parole, or release and shall report the information to the Department of State Police within 3 days. The facility or institution shall also inform any person who must register that if he or she establishes a residence outside of the State of Illinois, is employed outside of the State of Illinois, or attends school outside of the State of Illinois, he or she must register in the new state within 10 days after establishing the residence, beginning school, or beginning employment. The Department of State Police shall notify the law enforcement agencies having jurisdiction where the person expects to reside, work, and attend school upon his or her release.

730 ILCS 150/5-10. Nonforwardable verification letters

§ 5-10. Nonforwardable verification letters. The Department of State Police shall mail a quarterly nonforwardable verification letter to each registered person who has been adjudicated to be sexually dangerous or is a sexually violent person and is later released, or found to be no longer sexually dangerous or no longer a sexually violent person and discharged, beginning 90 days from the date of his or her last registration. To any other person registered under this Article, the De-

partment of State Police shall mail an annual nonforwardable verification letter, beginning one year from the date of his or her last registration. A person required to register under this Article who is mailed a verification letter shall complete, sign, and return the enclosed verification form to the Department of State Police postmarked within 10 days after the mailing date of the letter. A person's failure to return the verification form to the Department of State Police within 10 days after the mailing date of the letter shall be considered a violation of this Article.

730 ILCS 150/6. Duty to report; change of address, school, or employment; duty to inform

§ 6. Duty to report; change of address, school, or employment; duty to inform. A person who has been adjudicated to be sexually dangerous or is a sexually violent person and is later released, or found to be no longer sexually dangerous or no longer a sexually violent person and discharged, shall report in person to the law enforcement agency with whom he or she last registered no later than 90 days after the date of his or her last registration and every 90 days thereafter. Any other person who is required to register under this Article shall report in person to the appropriate law enforcement agency with whom he or she last registered within one year from the date of last registration and every year thereafter. If any person required to register under this Article changes his or her residence address, place of employment, or school, he or she shall, in writing, within 10 days inform the law enforcement agency with whom he or she last registered of his or her new address, change in employment, or school and register with the appropriate law enforcement agency within the time period specified in Section 3. The law en-

forcement agency shall, within 3 days of receipt, notify the Department of State Police and the law enforcement agency having jurisdiction of the new place of residence, change in employment, or school.

If any person required to register under this Article establishes a residence or employment outside of the State of Illinois, within 10 days after establishing that residence or employment, he or she shall, in writing, inform the law enforcement agency with which he or she last registered of his or her out-of-state residence or employment. The law enforcement agency with which such person last registered shall, within 3 days notice of an address or employment change, notify the Department of State Police. The Department of State Police shall forward such information to the out-of-state law enforcement agency having jurisdiction in the form and manner prescribed by the Department of State Police.

730 ILCS 150/6-5. Out-of-State employee or student; duty to report change

§ 6-5. Out-of-State employee or student; duty to report change. Every out- of-state student or out-of-state employee must notify the agency having jurisdiction of any change of employment or change of educational status, in writing, within 10 days of the change. The law enforcement agency shall, within 3 days after receiving the notice, enter the appropriate changes into LEADS.

730 ILCS 150/7. Duration of registration

§ 7. Duration of registration. A person who has been adjudicated to be sexually dangerous and is later released or found to be no longer sexually dangerous and

discharged, shall register for the period of his or her natural life. A sexually violent person or sexual predator shall register for the period of his or her natural life after conviction or adjudication if not confined to a penal institution, hospital, or other institution or facility, and if confined, for the period of his or her natural life after parole, discharge, or release from any such facility. Any other person who is required to register under this Article shall be required to register for a period of 10 years after conviction or adjudication if not confined to a penal institution, hospital or any other institution or facility, and if confined, for a period of 10 years after parole, discharge or release from any such facility. A sex offender who is allowed to leave a county, State, or federal facility for the purposes of work release, education, or overnight visitations shall be required to register within 10 days of beginning such a program. Liability for registration terminates at the expiration of 10 years from the date of conviction or adjudication if not confined to a penal institution, hospital or any other institution or facility and if confined, at the expiration of 10 years from the date of parole, discharge or release from any such facility, providing such person does not, during that period, again become liable to register under the provisions of this Article. The Director of State Police, consistent with administrative rules, shall extend for 10 years the registration period of any sex offender, as defined in Section 2 of this Act, who fails to comply with the provisions of this Article.

730 ILCS 150/8. Registration Requirements

§ 8. Registration Requirements. Registration as required by this Article shall consist of a statement in writing signed by the person giving the information that is required by the Department of State Police,

which may include the fingerprints and must include a photograph of the person. The registration information must include whether the person is a sex offender as defined in the Sex Offender and Child Murderer Community Notification Law. Within 3 days, the registering law enforcement agency shall forward any required information to the Department of State Police. The registering law enforcement agency shall enter the information into the Law Enforcement Agencies Data System (LEADS) as provided in Sections 6 and 7 of the Intergovernmental Missing Child Recovery Act of 1984.

[Footnotes Omitted]

730 ILCS 150/8-5. Address verification requirements

§ 8-5. Address verification requirements. The agency having jurisdiction shall verify the address of sex offenders, as defined in Section 2 of this Act, or sexual predators required to register with their agency at least once per calendar year. The verification must be documented in LEADS in the form and manner required by the Department of State Police.

730 ILCS 150/9. Public inspection of registration data

§ 9. Public inspection of registration data. Except as provided in the Sex Offender and Child Murderer Community Notification Law, the statements or any other information required by this Article shall not be open to inspection by the public, or by any person other than by a law enforcement officer or other individual as may be authorized by law and shall include law enforcement agencies of this State, any other state, or of the federal government. Similar information may be requested from any law enforcement agency of another

state or of the federal government for purposes of this Act. It is a Class B misdemeanor to permit the unauthorized release of any information required by this Article.

[Footnotes Omitted]

730 ILCS 150/10. Penalty

§ 10. Penalty. Any person who is required to register under this Article who violates any of the provisions of this Article and any person who is required to register under this Article who seeks to change his or her name under Article 21 of the Code of Civil Procedure is guilty of a Class 4 felony. Any person who is required to register under this Article who knowingly or wilfully gives material information required by this Article that is false is guilty of a Class 3 felony. Any person convicted of a violation of any provision of this Article shall, in addition to any other penalty required by law, be required to serve a minimum period of 7 days confinement in the local county jail. The court shall impose a mandatory minimum fine of $500 for failure to comply with any provision of this Article. These fines shall be deposited in the Sex Offender Registration Fund. Any sex offender, as defined in Section 2 of this Act, or sexual predator who violates any provision of this Article may be tried in any Illinois county where the sex offender can be located.

[Footnotes Omitted]

730 ILCS 150/10.9. Severability

§ 10.9. Severability. If a provision or application of this Article is held to be invalid with respect to any person or class of persons, that invalidity does not affect other

persons or classes of persons whose registration obligations can be given effect without the invalid provision or application. To this end an invalid provision or application of this Article is declared to be severable.

730 ILCS 150/11. Sex offender registration fund

§ 11. Sex offender registration fund. There is created the Sex Offender Registration Fund. Moneys in the Fund shall be used to cover costs incurred by the criminal justice system to administer this Article. The Department of State Police shall establish and promulgate rules and procedures regarding the administration of this Fund. At least 50% of the moneys in the Fund shall be allocated by the Department for sheriffs' offices and police departments.

730 ILCS 150/12. Access to State of Illinois databases

§ 12. Access to State of Illinois databases. The Department of State Police shall have access to State of Illinois databases containing information that may help in the identification or location of persons required to register under this Article. Interagency agreements shall be implemented, consistent with security and procedures established by the State agency and consistent with the laws governing the confidentiality of the information in the databases. Information shall be used only for administration of this Article.

APPENDIX K:
Notification Act,
730 ILL. COMP. STAT. 152/101 et seq. (West 2003)

730 ILCS 152/101. Short title

§ 101. Short title. This Article may be cited as the Sex Offender and Child Murderer Community Notification Law.

730 ILCS 152/105. Definitions

§ 105. Definitions. As used in this Article, the following definitions apply:

"Child care facilities" has the meaning set forth in the Child Care Act of 1969, but does not include licensed foster homes.

"Law enforcement agency having jurisdiction" means the Chief of Police in the municipality in which the sex offender expects to reside (1) upon his or her discharge, parole or release or (2) during the service of his or her sentence of probation or conditional discharge, or the Sheriff of the county, in the event no Police Chief exists or if the offender intends to reside in an unincorporated area. "Law enforcement agency having jurisdiction" includes the location where out-of-state students attend school and where out-of-state employees are employed or are otherwise required to register.

"Sex offender" means any sex offender as defined in the Sex Offender Registration Act whose offense or adjudication as a sexually dangerous person occurred on or after June 1, 1996, and whose victim was under the age of 18 at the time the offense was committed but does not include the offenses set forth in subsection (b)(1.5) of Section 2 of that Act; and any sex offender as de-

fined in the Sex Offender Registration Act whose offense or adjudication as a sexually dangerous person occurred on or after June 1, 1997, and whose victim was 18 years of age or older at the time the offense was committed but does not include the offenses set forth in subsection (b)(1.5) of Section 2 of that Act.

"Sex offender" also means any sex offender as defined in the Sex Offender Registration Act whose offense or adjudication as a sexually dangerous person occurred before June 1, 1996, and whose victim was under the age of 18 at the time the offense was committed but does not include the offenses set forth in subsection (b)(1.5) of Section 2 of that Act; and any sex offender as defined in the Sex Offender Registration Act whose offense or adjudication as a sexually dangerous person occurred before June 1, 1997, and whose victim was 18 years of age or older at the time the offense was committed but does not include the offenses set forth in subsection (b)(1.5) of Section 2 of that Act.

"Juvenile sex offender" means any person who is adjudicated a juvenile delinquent as the result of the commission of or attempt to commit a violation set forth in item (B), (C), or (C-5) of Section 2 of the Sex Offender Registration Act, or a violation of any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law, and whose adjudication occurred on or after the effective date of this amendatory Act of the 91st General Assembly.

[Footnotes Omitted]

730 ILCS 152/110. Registration

§ 110. Registration. At the time a sex offender registers under Section 3 of the Sex Offender Registration Act or reports a change of address or employment under Sec-

tion 6 of that Act, the offender shall notify the law enforcement agency having jurisdiction with whom the offender registers or reports a change of address or employment that the offender is a sex offender.

[Footnotes Omitted]

730 ILCS 152/115. Sex offender database

§ 115. Sex offender database.

(a) The Department of State Police shall establish and maintain a Statewide Sex Offender Database for the purpose of identifying sex offenders and making that information available to the persons specified in Sections 120 and 125 of this Law. The Database shall be created from the Law Enforcement Agencies Data System (LEADS) established under Section 6 of the Intergovernmental Missing Child Recovery Act of 1984. The Department of State Police shall examine its LEADS database for persons registered as sex offenders under the Sex Offender Registration Act and shall identify those who are sex offenders and shall add all the information, including photographs if available, on those sex offenders to the Statewide Sex Offender Database.

(b) The Department of State Police must make the information contained in the Statewide Sex Offender Database accessible on the Internet by means of a hyperlink labeled "Sex Offender Information" on the Department's World Wide Web home page. The Department of State Police must update that information as it deems necessary.

The Department of State Police may require that a person who seeks access to the sex offender information submit biographical information about himself or herself before permitting access to the sex offender infor-

mation. The Department of State Police may limit access to the sex offender information to information about sex offenders who reside within a specified geographic area in proximity to the address of the person seeking that information. The Department of State Police must promulgate rules in accordance with the Illinois Administrative Procedure Act to implement this subsection (b) and those rules must include procedures to ensure that the information in the database is accurate.

[Footnotes Omitted]

730 ILCS 152/117. Promulgation of Rules

§ 117. The Department of State Police shall promulgate rules to develop a list of sex offenders covered by this Act and a list of child care facilities, schools, and institutions of higher education eligible to receive notice under this Act, so that the list can be disseminated in a timely manner to law enforcement agencies having jurisdiction.

730 ILCS 152/120. Community notification of sex offenders

§ 120. Community notification of sex offenders.

(a) The sheriff of the county, except Cook County, shall disclose to the following the name, address, date of birth, place of employment, school attended, and offense or adjudication of all sex offenders required to register under Section 3 of the Sex Offender Registration Act:

(1) The boards of institutions of higher education or

other appropriate administrative offices of each non-public institution of higher education located in the county where the sex offender is required to register, resides, is employed, or is attending an institution of higher education; and

(2) School boards of public school districts and the principal or other appropriate administrative officer of each nonpublic school located in the county where the sex offender is required to register or is employed; and

(3) Child care facilities located in the county where the sex offender is required to register or is employed.

(a-2) The sheriff of Cook County shall disclose to the following the name, address, date of birth, place of employment, school attended, and offense or adjudication of all sex offenders required to register under Section 3 of the Sex Offender Registration Act:

(1) School boards of public school districts and the principal or other appropriate administrative officer of each nonpublic school located within the region of Cook County, as those public school districts and nonpublic schools are identified in LEADS, other than the City of Chicago, where the sex offender is required to register or is employed; and

(2) Child care facilities located within the region of Cook County, as those child care facilities are identified in LEADS, other than the City of Chicago, where the sex offender is required to register or is employed; and

(3) The boards of institutions of higher education or other appropriate administrative offices of each non-public institution of higher education located in the county, other than the City of Chicago, where the sex offender is required to register, resides, is employed, or attending an institution of higher education.

(a-3) The Chicago Police Department shall disclose to the following the name, address, date of birth, place of employment, school attended, and offense or adjudication of all sex offenders required to register under Section 3 of the Sex Offender Registration Act:

(1) School boards of public school districts and the principal or other appropriate administrative officer of each nonpublic school located in the police district where the sex offender is required to register or is employed if the offender is required to register or is employed in the City of Chicago; and

(2) Child care facilities located in the police district where the sex offender is required to register or is employed if the offender is required to register or is employed in the City of Chicago; and

(3) The boards of institutions of higher education or other appropriate administrative offices of each non-public institution of higher education located in the police district where the sex offender is required to register, resides, is employed, or attending an institution of higher education in the City of Chicago.

(a-4) The Department of State Police shall provide a list of sex offenders required to register to the Illinois Department of Children and Family Services.

(b) The Department of State Police and any law enforcement agency may disclose, in the Department's or agency's discretion, the following information to any person likely to encounter a sex offender, or sexual predator:

(1) The offender's name, address, and date of birth.

(2) The offense for which the offender was convicted.

(3) Adjudication as a sexually dangerous person.

(4) The offender's photograph or other such information that will help identify the sex offender.

(5) Offender employment information, to protect public safety.

(c) The name, address, date of birth, and offense or adjudication for sex offenders required to register under Section 3 of the Sex Offender Registration Act shall be open to inspection by the public as provided in this Section. Every municipal police department shall make available at its headquarters the information on all sex offenders who are required to register in the municipality under the Sex Offender Registration Act. The sheriff shall also make available at his or her headquarters the information on all sex offenders who are required to register under that Act and who live in unincorporated areas of the county. Sex offender information must be made available for public inspection to any person, no later than 72 hours or 3 business days from the date of the request. The request must be made in person, in writing, or by telephone. Availability must include giving the inquirer access to a facility where the information may be copied. A department or sheriff may charge a fee, but the fee may not exceed the actual costs of copying the information. An inquirer must be allowed to copy this information in his or her own handwriting. A department or sheriff must allow access to the information during normal public working hours. The sheriff or a municipal police department may publish the photographs of sex offenders where any victim was 13 years of age or younger and who are required to register in the municipality or county under the Sex Offender Registration Act in a newspaper or magazine of general circulation in the municipality or county or may disseminate the photographs of those sex offenders on the Internet or on television. The law enforcement agency may make available the informa-

tion on all sex offenders residing within any county.

(d) The Department of State Police and any law enforcement agency having jurisdiction may, in the Department's or agency's discretion, place the information specified in subsection (b) on the Internet or in other media.

(e) The Department of State Police and any law enforcement agency having jurisdiction may, in the Department's or agency's discretion, only provide the information specified in subsection (b), with respect to an adjudicated juvenile delinquent, to any person when that person's safety may be compromised for some reason related to the juvenile sex offender.

[Footnotes Omitted]

730 ILCS 152/130. Immunity

§ 130. Immunity. Notwithstanding any other provision of law to the contrary, any person who provides or fails to provide information relevant to the procedures set forth in this Law shall not be liable in any civil or criminal action. This immunity extends to the secondary release of any of this information legally obtained in conjunction with procedures set forth in this Law.

730 ILCS 152/905. Severability

§ 905. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

[Footnotes Omitted]

730 ILCS 152/999. Effective date

§ 999. Effective date. This Act takes effect upon becoming law, except that Article 1 takes effect June 1, 1996 and Article 3 take